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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-11711-scc

Adv. Case No. 19-01300-scc

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In the Matter of:

THE D&M CAPITAL GROUP, LLC,

Debtor.

- - - - - x

THE D&M CAPITAL GROUP, LLC,

Plaintiff,

v.

ESSEX GLOBAL TRADING, LLC et al.,

Defendants.

- - - - - x

United States Bankruptcy Court  
One Bowling Green  
New York, NY 10004

August 13, 2019  
11:17 AM

B E F O R E :  
HON SHELLEY C. CHAPMAN  
U.S. BANKRUPTCY JUDGE  
  
ECRO: SHEA

1 HEARING re 19-11711-scc Status Conference

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3 HEARING re 19-01300-scc Status Conference

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25 Transcribed by: Sonya Ledanski Hyde

1     A P P E A R A N C E S :

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9 Attorneys for Ultimate Jewelry Designs LLC and Shang

10 Hai Pearls & Gems Inc., Locally Known as Ultimate

11 Diamond

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13 New York, NY 10016

14  
15 BY: ANDREW S. MULLER

16  
17 ALSO PRESENT TELEPHONICALLY:

18  
19 PAUL FERDINANDS

20 SARAH PRIMROSE

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P R O C E E D I N G S

THE COURT: Okay. Have a seat. All right. So,  
good morning.

MS. CASSIRER: Good morning, Your Honor.

MR. GOODMAN: Good morning, Your Honor.

THE COURT: Well, we're kind of hitting the reset  
button in this case. Yes?

MR. GOODMAN: A little bit, yes.

THE COURT: Little bit? Okay. Talk to me.

MR. GOODMAN: Your Honor, for the record, Brett  
Goodman, Troutman Sanders, proposed counsel to the Debtor  
Aurora Cassirer, Troutman Sanders

MR. ISRAEL: Sam Israel, Essex Global Trading

MR. PAUL: Alecks Paul debtors

MR. GOODMAN: Brett Goodman, Troutman Sanders,  
proposed counsel to Debtor and Debtor in Possession. Here  
with me are my colleagues, Aurora Cassirer and Allisa  
Piccione.

THE COURT: Hello.

MS. PICCIONE: Good morning, Your Honor.

MS. CASSIRER: Good morning, Your Honor.

MR. GOODMAN: I'll also note for the record, Your  
Honor, that the Debtor's sole member and manager, Mr. Moty  
Spector is in the courtroom -- oh, just stepped out of the  
courtroom.

1 THE COURT: Okay. All right.

2 MR. GOODMAN: But he's here today.

3 THE COURT: Okay.

4 MR. GOODMAN: Your Honor, if I may, I can proceed  
5 on it.

6 THE COURT: Please.

7 MR. GOODMAN: There's a status conference --

8 THE COURT: Yes.

9 MR. GOODMAN: -- in both the main case and the  
10 adversary.

11 THE COURT: And the adversary. Right.

12 MR. GOODMAN: I'm happy to start with the main  
13 case.

14 THE COURT: Sure.

15 MR. GOODMAN: And my colleague and partner will  
16 handle the adversary.

17 THE COURT: Sure. And we do have on the phone  
18 folks appearing on behalf of Radwan Diamond & Jewellery  
19 Trading. So, go ahead.

20 MR. GOODMAN: Thank you, Your Honor. Again, Brett  
21 Goodman, Troutman Sanders, proposed counsel for the Debtor,  
22 the D&M Capital Group. We've been proposed counsel since we  
23 substituted for prior counsel on July 10th of 2019.

24 If it's okay, Your Honor, I'd like to step back a  
25 little, as I know the only hearing thus far before the Court

1 was on an expedited basis in connection with a motion for a  
2 temporary restraining order.

3 THE COURT: Which was denied.

4 MR. GOODMAN: In part.

5 THE COURT: In part.

6 MR. GOODMAN: And Your Honor did not get the  
7 benefit of a traditional first-day hearing in this case.  
8 So, if I could go backwards before we get to where we are  
9 today.

10 By way of background, Your Honor, the Debtor is in  
11 the business of buying and selling high-end diamonds and  
12 other precious stones and finished jewelry throughout the  
13 world.

14 The Debtor's business involves essentially three  
15 aspects. The first is the purchase of diamonds, loose  
16 stones and jewelry, either directly or with the  
17 participation with other third-party participants or  
18 investors. The second is the receipt of those similar  
19 diamonds, loose stones and jewelry on consignment from  
20 wholesalers for sale to third parties. And the third  
21 component of the business would be the consignment of memo  
22 goods to other dealers in the trade.

23 The Debtor has been operating, and successfully, I  
24 might add, since 2006. However, in the months preceding the  
25 Chapter 11 filing, the Debtor entered into four consignment



1 transactions with Essex Global Trading LLC, another dealer,  
2 for a total of six pieces with an aggregate memo value of  
3 over \$17 million. Some of this may be familiar to you from  
4 the TRO hearing.

5 But in connection with that last transaction of  
6 the four, Essex, we believe, fraudulently induced the Debtor  
7 to invoice a sale for \$7.5 million, failed to remit payment  
8 on account of that invoice, and then converted all of the  
9 goods in its possession, all six pieces, rendering the  
10 Debtor insolvent in order to "protect itself" against an  
11 alleged unsecured loan debt that the Debtor disputes.

12 As a result of Essex's conduct, the Debtor filed  
13 its Chapter 11 case on May 28th, 2019, and thereafter the  
14 following month, commenced the related adversary proceeding  
15 against Essex, it's principal, Alecks Paul and others, that  
16 my partner, Aurora Cassirer, will update the Court on in  
17 connection with that status conference.

18 Your Honor, since the filing, the Debtor has  
19 secured all of the inventory in its possession as of the  
20 petition date and has taken additional goods on memo. The  
21 Debtor's premises are secured by a standard double-door  
22 entry with a mantrap. The Debtor's safe --

23 THE COURT: With a...?

24 MR. GOODMAN: With a mantrap.

25 MR. GOODMAN: So, the double-door entry is

1       essentially -- if you've ever been in the diamond district,  
2       you buzz into one door.

3               THE COURT:   Yes.

4               MR. GOODMAN:  That door -- the second door will  
5       not open until the door behind you closes, and that's called  
6       a mantrap.

7               THE COURT:  Presumably, it works for women as  
8       well.

9               MR. GOODMAN:  Presumably, it works for women as  
10      well.

11              MS. CASSIRER:  I can vouch for that, Your Honor.  
12      It does.

13              THE COURT:  Unfortunate terminology.

14              MR. GOODMAN:  Unfortunate --

15              THE COURT:  It's just a secure double-door  
16      situation.

17              MR. GOODMAN:  Double-door lock.  But as it's used  
18      in the trade, that's what it's called.  The Debtor's safe is  
19      armed with an active alarm system from DGA Security, and  
20      also includes a double combination lock.  And since the  
21      filing, the Debtor has also maintained all of its insurance  
22      on its inventory since the filing under a Lloyd's of London  
23      policy.

24              With respect to the Debtor's inventory, the Debtor  
25      is holding in its vaults, goods with a cost value of

1 approximately one \$1.4 million, of which approximately  
2 \$950,000 of those goods the Debtor owns outright. The  
3 Debtor is also holding an approximately \$4 million -- just  
4 under \$4 million of memo goods that it received on August  
5 12th in three separate consignment transactions.

6 In addition, the Debtor has an interest in goods  
7 with approximately \$24 million in total memo value out on  
8 consignment to third parties. And of that amount,  
9 approximately \$5,530,000 of memo value is on consignment  
10 with Essex.

11 The Debtor, as I mentioned, also invoiced the sale  
12 of two pieces to Essex with a total memo value of  
13 approximately \$11.5 million that Essex took possession of  
14 and has not paid for or returned.

15 As a result of the filing and the time of the year  
16 in this industry, the Debtor had conducted relatively no  
17 business in the months of June and July, which is reflected  
18 on the monthly operating reports -- and I'm happy to say the  
19 Debtor is current -- but has begun to take additional goods  
20 on consignment and intends to pick up its business moving  
21 forward. As I noted yesterday, in fact the Debtor received  
22 goods worth approximately \$4 million in total memo value on  
23 consignment.

24 However, given the lack of revenue petition date,  
25 Mr. Spector has been funding this case directly through a

1 series of capital contributions for the Debtor. And we  
2 understand he intends to continue to do so until there is  
3 adequate revenue and cash in the business. Your Honor may  
4 have also noted that the Debtor's original DIP financing  
5 motion was withdrawn without prejudice to a future loan in  
6 favor of an equity contribution, which the estate believes  
7 demonstrates Mr. Spector's commitment to the Chapter 11  
8 process.

9 That said, Your Honor, these capital contributions  
10 are not unlimited. And it's therefore critical that the  
11 estate move this case forward expeditiously. We believe  
12 that there is a path forward to a successful Chapter 11 exit  
13 through either a plan or a structured dismissal that can be  
14 achieved through a combination of the return of goods or  
15 proceeds in Essex's possession; the return, monetization or  
16 settlement of inventory out on memo with other third parties  
17 and participants in those goods; and the continuation of the  
18 Debtor's trading business.

19 Your Honor, the estate is confident that save the  
20 dispute with Essex, it will be able to resolve or satisfy  
21 each of the creditors' claims, including the claims in  
22 interest of its participants in various forms. And although  
23 the Debtor has been busy preparing its amended complaint and  
24 handling administrative matters, the Debtor and its counsel  
25 have already had initial discussions and meetings with the

1 largest undisputed unsecured creditor in this case and each  
2 of its participants in the Essex stones.

3 With that, Your Honor, I'm happy to answer any  
4 questions that you may have with respect to the main case.  
5 A 341 meeting was conducted last Friday and completed with  
6 the U.S. Trustee. As I indicated, monthly operating reports  
7 her current. The next one is due this week and will be  
8 filed. We have a draft of that today.

9 THE COURT: Okay. All right, you've hit all the  
10 important points. Mr. Morrissey, do you have anything that  
11 you'd like to say about the status of the case generally?

12 MR. MORRISSEY: Your Honor, for the record,  
13 Richard Morrissey, for the U.S. Trustee. No, I really have  
14 nothing to add. There was some interest, Your Honor, in a  
15 Creditors' Committee, but not sufficient interest for us to  
16 actually form one. But the door is still open if someone  
17 wants to solicit. Thank you.

18 THE COURT: All right. So, perhaps we should turn  
19 to the adversary.

20 MR. GOODMAN: Yes. Absolutely, Your Honor. We  
21 believe that to be critical to the overall case as well, and  
22 I'll hand it off to my partner, Aurora Cassirer.

23 THE COURT: Go ahead. Thank you.

24 MS. CASSIRER: Thank you, Your Honor.

25 THE COURT: Good morning.

1 MS. CASSIRER: My name is Aurora Cassirer. I'm a  
2 partner in the firm Troutman Sanders. My partner, Brett has  
3 touched on the highlights of why we brought the adversary  
4 proceeding and what we hope to accomplish with it. I'll  
5 talk in a little more detail on it.

6 As Brett said, between February 28 and May 21,  
7 during the 90-day period preceding the filing, the Debtor  
8 consigned over \$17 million worth of goods to Essex Global  
9 through four separate transactions, the last of which  
10 culminated in a fraudulently induced invoice of the \$7.5  
11 million.

12 I'll cut to the chase. Despite demand for the  
13 goods, as per the terms of the consignment agreement, so the  
14 memos, and I'll read you from them. They actually are  
15 contained in Page 12 of our complaint. And despite a demand  
16 for the proceeds of this alleged sale, we've got nothing.  
17 So, Essex essentially holds the bulk of the Debtor's  
18 assets.

19 Each of the goods at issue was covered by a  
20 consignment memo evidencing the transfer and provided that  
21 the goods remain with the Debtor and must be returned on  
22 demand. The memos also prohibit -- and that's, again, on  
23 Page 12 -- each of the memos to the consignments to Essex  
24 are described on Pages 12-16 of the amended complaint, and  
25 are annexed as Exhibits T, U, V and X.

1           The memos prohibit Essex from disposing of the  
2       precious stones unless the Debtor agrees to the disposition.  
3       So far, dead silence from Essex. No response at all to our  
4       various demands to them for an accounting, for return of the  
5       goods. The first demand post-bankruptcy was made on May  
6       29th, the day after the filing. The second demand -- and  
7       there may have been others in between -- was made by us on  
8       August 12th. Again, no response.

9           THE COURT: Can I ask you to stop? I just -- if  
10      you could send us a hard copy of the amended complaint, that  
11      would be helpful. I'm just going back to --

12      MS. CASSIRER: Happy to do that, Your Honor.

13      THE COURT: Thank you. I'm just going back to the  
14      order that we entered on the request for a TRO. And at that  
15      time, based on the representation of counsel to Essex, there  
16      were two stones that remained in -- it was represented and  
17      informed the basis of the TRO order that there were two  
18      stones that remained in Essex's possession. Just trying to  
19      track that.

20      So, that's the JP-0105, which has a value of \$1.38  
21      million, and the JE-0104. Those are both on the Memo Number  
22      5251. Right?

23      MS. CASSIRER: Yes.

24      THE COURT: Right? Now the other ones, it was  
25      represented are no longer in Essex's possession.

1 MS. CASSIRER: Well, it was unclear, but you are  
2 essentially correct. It was represented that they were no  
3 longer in their possession, that they may be in transit. We  
4 don't know anything, Your Honor, because there's been a  
5 refusal to account for the stones.

6 Now, there is absolutely no basis for this grab,  
7 or I would call it basically stolen goods, by Essex.  
8 Essentially, what happened here is that Essex claims at an  
9 unrelated transaction that the Debtor owes it something in  
10 the neighborhood of \$6.5 million. The Debtor disputes that  
11 debt.

12 The \$6.5 million arises out of a number of  
13 predatory lending agreements that go back to 2012, in which  
14 Essex lent money to the Debtor at two percent interest a  
15 month. Over the course of seven years, the Debtor paid  
16 Essex close to or in the neighborhood of \$10 million in  
17 interest.

18 And then in May of 2019, Essex basically told the  
19 Debtor -- took these memo goods, he refused to return them,  
20 then said that he had a buyer for \$7.5 million worth of  
21 goods. Turned out to be false, admittedly false, because it  
22 confessed that to D&M's administrator. And essentially took  
23 the goods, didn't pay money, and failed to account for  
24 anything in those memos.

25 It rendered us insolvent. I mean, the adversary



1 proceeding was brought in an effort to deal with the  
2 situation, get an accounting, get goods back. As we say in  
3 our complaint, Mr. Paul, the principal of Essex, has a  
4 criminal background, having been incarcerated for six years  
5 for securities fraud.

6 MR. ISRAEL: Your Honor, I have an objection to  
7 what's being said right now. This is the relevant material.  
8 It's obviously intended to prejudice the Court.

9 THE COURT: Okay.

10 MR. ISRAEL: It was appended to their papers.

11 THE COURT: All right. I --

12 MS. CASSIRER: Your Honor, he also has --

13 THE COURT: I'll hear from you in a minute, Mr.  
14 Israel --

15 MR. ISRAEL: Sorry, Your Honor?

16 THE COURT: I'll hear from you in a minute.

17 MR. ISRAEL: Okay.

18 THE COURT: Okay? Thank you.

19 MS. CASSIRER: He also has --

20 THE COURT: So, let's --

21 MS. CASSIRER: We don't know where the goods are.

22 THE COURT: Okay.

23 MS. CASSIRER: They could be -- I mean --

24 THE COURT: I hear what you're saying. What's the  
25 path forward that you intend to take now that you have the

1 amended complaint --

2 MS. CASSIRER: Okay.

3 THE COURT: -- on file?

4 MS. CASSIRER: We have --

5 THE COURT: There was a motion to dismiss. That's  
6 been superseded by your new complaint.

7 MS. CASSIRER: Correct, Your Honor. What we would  
8 like Your Honor, is to get expedited discovery. We have  
9 discovery ready to go today --

10 THE COURT: Okay.

11 MS. CASSIRER: -- both documentary discovery and  
12 the depositions of Mr. Paul and his son. And we'd like to  
13 basically get all the documents returnable to us within  
14 seven days. Sorry, Essex 30-B6 as well. So, it's Essex and  
15 its principals and the son.

16 So, seven days return. They should have all these  
17 documents handy. I'm not asking for all the documents going  
18 back to 2012 for now. We just want -- for the time being,  
19 we need to gather these assets back into the Debtor's  
20 estate. Seven days return on the documents, how they've  
21 been safeguarded, things like that. They could be in Russia  
22 by now. I don't know.

23 And we would like the depositions taken or  
24 completed on August 27th, 28th.

25 THE COURT: Have you served this discovery?

1 MS. CASSIRER: Serving it today.

2 THE COURT: Serving it today? I can't -- I mean,  
3 without hearing from the Defendant, I can't say okay --

4 MS. CASSIRER: Well, that's our path --

5 THE COURT: -- to what you're saying.

6 MS. CASSIRER: -- forward, Your Honor.

7 THE COURT: Okay.

8 MS. CASSIRER: That's our plan. We've been in  
9 touch with the attorneys for the nominal Defendant's.  
10 They're basically -- they know what they're doing. I  
11 believe they support us. We're hoping that with this  
12 discovery, this will lead to basically a settlement, or a  
13 plan, or a structured dismissal at one point. But we really  
14 need to move on this quickly.

15 THE COURT: Okay. All right. Let me hear from  
16 Mr. Israel.

17 MS. CASSIRER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. ISRAEL: Thank you, Your Honor. Sam Israel,  
20 for Essex Global Trading, LLC.

21 There's a bunch of things that were just said that  
22 are wrong. The thing I was objecting about was they  
23 appended to their papers -- they being the Plaintiff --

24 THE COURT: Mm hmm.

25 MR. ISRAEL: -- Debtor -- appended to their papers

1 certain scurrilous data which has nothing to do with this  
2 case, which is obviously just intended to prejudice your  
3 view of my client.

4 Putting that aside, there are answers to each of  
5 these questions that are being raised about these gems --  
6 where they are, who has them, and why they have them -- and  
7 we can respond to that. But this is in the motion for  
8 summary judgment that we filed that brought us here  
9 originally here today. And in response to our motion to  
10 dismiss, as you know, they filed -- you just said, in fact,  
11 that they filed an amended complaint.

12 The amended complaint doesn't cure the problem.  
13 They acknowledge in the amended complaint, they still don't  
14 own these gems. So, the issue about necessary party and  
15 standing are extant. So, what we're going to do --

16 THE COURT: I'm sorry, they still don't own --

17 MR. ISRAEL: Own the gems. The gems they're suing  
18 over --

19 THE COURT: Yes.

20 MR. ISRAEL: I said they -- the Plaintiff/Debtor  
21 still does not own the gems that are being sued over. He  
22 has a participation, or the company has a participation  
23 along with other parties. For them to sue my client, what  
24 they would have to do is they would have to join together  
25 and bring the lawsuit together. Otherwise, they're lacking

1 a necessary party to bring suit.

2 THE COURT: Well, have you seen the participation  
3 agreement?

4 MR. ISRAEL: No. What I've seen is the  
5 participation motion that they filed, where they say in  
6 their motion --

7 THE COURT: I'm sorry. What's a participation  
8 motion?

9 MR. ISRAEL: Oh, I thought you might have recalled  
10 this from last time. The Debtor filed a motion asking the  
11 Court to acknowledge participation interests in each of  
12 these gems.

13 THE COURT: It's a whole new day. I'm not --

14 MR. ISRAEL: I understand that, but --

15 THE COURT: Hold on. Let me -- I want to try to  
16 get on the same page. All of that's withdrawn. It's  
17 ancient history, right? So, now my question is, if what  
18 you're saying is that the Plaintiff cannot proceed because  
19 it doesn't have standing, or whatever you believe it needs  
20 to proceed --

21 MR. ISRAEL: Right.

22 THE COURT: -- I'd like to try to get an answer to  
23 that question. I'm very meat and potatoes, okay? I don't  
24 want to waste a lot of time. Okay? I want to find out what  
25 really happened. Okay? So, there were gems. They say they

1       were improperly taken, disposed of by your client. I want  
2       to find out what happened.

3               So, the first thing you say is they're not  
4       entitled to bring that. So, let me ask what the facts are.

5               MR. ISRAEL: Can I just explain why I'm saying  
6       what I'm saying?

7               THE COURT: Yeah. Because you want to file a  
8       motion to dismiss.

9               MR. ISRAEL: But can I explain what the basis for  
10      it would be?

11              THE COURT: Sure.

12              MR. ISRAEL: Even though this motion was withdrawn  
13      and that we have a brand-new day --

14              THE COURT: Right.

15              MR. ISRAEL: -- what we don't have our new facts.  
16      We don't have new facts.

17              THE COURT: Well, I don't know what the facts are  
18      at all. I only -- so, if you would, please --

19              MR. ISRAEL: Yes.

20              THE COURT: -- I can see you would like me not to  
21      talk, but I'm going to keep talking. Okay. I would like to  
22      ask counsel for the Debtor/Plaintiff what their version of  
23      the facts are. So, let me hear that, all right?

24              MR. ISRAEL: Okay, sure.

25              THE COURT: So, just --

1 MR. ISRAEL: All right.

2 THE COURT: We'll go -- we're going to keep at  
3 this. So, the allegation has been made, essentially, that  
4 the Plaintiff, the Debtor, doesn't have the right to bring  
5 this action. Could you respond to that?

6 MR. GOODMAN: Yes, Your Honor. I can respond in a  
7 little bit of detail or a lot of detail, and I'll try to cut  
8 to --

9 THE COURT: Start with a little and let's --

10 MR. GOODMAN: Try to cut --

11 THE COURT: -- ramp up to a lot. All right?

12 MR. GOODMAN: -- cut to the chase here. And I  
13 recognize, Your Honor, that you don't have the benefit of  
14 having reviewed the amended complaint.

15 THE COURT: Correct.

16 MR. GOODMAN: We took cues from the TRO hearing  
17 and the record. The complaint has been amended. There are  
18 additional allegations in the complaint and facts that  
19 obviously were included.

20 From our standpoint, we believe we have absolute  
21 standing, and that with the exception of the ruby ring,  
22 ownership does lay with the D&M estate. That interest is  
23 either a 33 percent interest or a 50 percent interest in all  
24 cases. And there is documentary support with respect to  
25 each of those stones of, one, the invoice and purchase by

1     our client and the ownership arrangement with the  
2     participants; the consignment of the good back and forth,  
3     with it ultimately landing with the estate; and then the  
4     consignment by the estate to Essex.

5             So, based on that and all of the documents that  
6     have been put in as exhibits to that support, we believe we  
7     have absolute standing to pursue these claims for the return  
8     of those goods on various counts, including fraudulent  
9     conveyance, preferential transfers, an alleged security  
10    interest.

11            There is no security agreement here. There is no  
12    security that was granted. There is no perfection of that  
13    interest. And to the extent that it even happened, it  
14    happened in the 90 days prior. This is all property of the  
15    estate, we believe, under 541. And we have claims under  
16    542.

17            I can get into specific detail on each of those --

18            THE COURT: No, that's fine. So, the bottom line,  
19    in response to Mr. Israel's kind of headline point, is that  
20    even if the Debtor only has a partial ownership, a less than  
21    100 percent ownership of the stone, it doesn't matter.  
22    You're entitled to bring the action.

23            MR. GOODMAN: Right. Because in either case, they  
24    have an ownership interest, but they were also the consignor  
25    to Essex or the consignee from one of their partners.



1 THE COURT: Okay. All right, thank you. Okay.

2 Mr. Israel, back to you.

3 MR. ISRAEL: I'll talk to it from here, if that's  
4 okay.

5 THE COURT: Yeah.

6 MR. ISRAEL: Well, this is not what Rule 9 calls  
7 for. Rule 9 calls for dismissal if there's a failure to  
8 name a necessary party to the action. If you've got three  
9 owners of a gem, and only one of them is suing and the other  
10 two are out there who aren't plaintiffs, you don't have  
11 necessary parties that you need to bring the action. Not  
12 only that --

13 THE COURT: Okay. Hold --

14 MR. GOODMAN: Can I just --

15 THE COURT: Hold --

16 MR. GOODMAN: Can I just address that real  
17 quickly? Each of the partners has been named nominally as a  
18 Defendant.

19 MR. ISRAEL: Doesn't matter.

20 MR. GOODMAN: They're all --

21 THE COURT: Well, hold on. Guys, we're not going  
22 to do this. Okay? I haven't seen the amended complaint.  
23 You want to bring a motion? Bring a motion. In the  
24 meantime, they are entitled to discovery. I'm not staying  
25 discovery while you bring a motion.

1 MR. ISRAEL: I understand that. I understand  
2 that.

3 THE COURT: Okay. All right.

4 MR. ISRAEL: The only thing I have to say about  
5 the discovery point is I heard talk about having it done in  
6 a couple weeks. That just --

7 THE COURT: You misheard. Ms. Cassirer said seven  
8 days.

9 MR. ISRAEL: Oh, it was seven days. That's right.  
10 My client's about to go away. I have work commitments.  
11 We're not going to be able to do seven-day turnaround on  
12 discovery, and we shouldn't be required to. I mean, this  
13 has been going on for a while.

14 THE COURT: You just made an argument -- you just  
15 made an admission against interests. This has been going on  
16 for a while?

17 MR. ISRAEL: Right.

18 THE COURT: This should be a relatively small  
19 universe of documents. I understand that it's the end of  
20 the summer. But you should be prepared to produce the  
21 documents pretty much immediately after Labor Day. We're  
22 not talking about a boatload of documents, right?

23 MR. ISRAEL: After Labor Day would be fine. We  
24 should be able to do it by after Labor Day. What I was  
25 panicked about was when I heard the seven days, Your Honor.

1 THE COURT: Well, you didn't hear me say --

2 MR. ISRAEL: I understand.

3 THE COURT: You didn't hear me say yes, right?

4 MR. ISRAEL: I understand that.

5 THE COURT: So, look, the fundamental is, I'm  
6 guessing, you're worried about where is this stuff, right?  
7 And that that's --

8 MS. CASSIRER: That's the primary concern.  
9 Absolutely.

10 THE COURT: That's the primary concern. I would  
11 suggest --

12 MS. CASSIRER: And we want it back.

13 THE COURT: I understand. I understand. Mr.  
14 Israel represented on the record of the prior hearing that  
15 the stones are not in Essex's possession. Okay? I assume  
16 that we're not being too cute by half and that they are in  
17 Essex's principals' possession, right?

18 MR. GOODMAN: The gems --

19 THE COURT: Where are the stones?

20 MR. ISRAEL: There's a different disposition of  
21 different gems, and what I represented to you in court, Your  
22 Honor, was what I just heard from my client in court in real  
23 time while we were hear.

24 THE COURT: Okay. But it's been a while now.

25 MR. ISRAEL: It has.

1 THE COURT: So, you should be in a position to  
2 answer where each of the gems is.

3 MR. ISRAEL: I personally don't have that  
4 information off the top of my --

5 THE COURT: Is your client here?

6 MR. ISRAEL: My client is here.

7 MS. CASSIRER: Right there, Your Honor.

8 THE COURT: All right. You want to talk to him?

9 MR. ISRAEL: Okay.

10 THE COURT: Do you want him to schedule? I mean,  
11 there is a schedule --

12 MR. ISRAEL: No, I know --

13 THE COURT: -- on the order. I'd like to know  
14 where the gems are.

15 MR. ISRAEL: Okay, Your Honor.

16 THE COURT: All right? Just take a moment.

17 MR. ISRAEL: Okay. Thank you. You know what?  
18 I'm sorry, Your Honor.

19 THE COURT: Yes.

20 MR. ISRAEL: I don't have that schedule with me.  
21 Could I borrow the schedule? Would you mind if I approach?

22 THE COURT: I would not mind at all. I would be  
23 happy to give it to you.

24 MR. ISRAEL: Thank you, Your Honor.

25 MAN: Thank you, Your Honor.

1 THE COURT: Do you want to take a short break?

2 MR. ISRAEL: It'd be a little easier if I could  
3 take a few minutes to talk to the guy.

4 THE COURT: I think it would. Next time you might  
5 talk to him before you come to court, but --

6 MR. ISRAEL: Well, I didn't know that we were  
7 going to be dealing with the issue of where each of the gems  
8 are.

9 THE COURT: Okay.

10 MR. ISRAEL: I thought we were going to approach  
11 the --

12 THE COURT: Well, it is rather the central issue.  
13 So, why don't we take a few-minute break. If you'd like to  
14 use my conference room back there, Mr. Israel --

15 MR. ISRAEL: Okay.

16 THE COURT: -- you can take your client in there.  
17 All right?

18 MR. ISRAEL: All right.

19 THE COURT: And we'll come back in 10 minutes.

20 MR. ISRAEL: Okay.

21 THE COURT: Everyone can just remain in place.  
22 Okay?

23 MR. ISRAEL: Thank you, Your Honor.

24 THE COURT: You see, Mr. Israel, it's that door  
25 over there.

1 MR. ISRAEL: Yeah.

2 THE COURT: Okay?

3 MR. ISRAEL: (indiscernible)

4 THE COURT: Okay. We'll come back in 10 minutes.

5 MR. ISRAEL: Thank you, Your Honor.

6 CLERK: All rise.

7 (Recess)

8 THE COURT: Okay. Mr. Israel, what did you find  
9 out?

10 MR. ISRAEL: I found out that the gems are with  
11 someone named Anna (indiscernible), who is a jewelry dealer  
12 in Moscow.

13 THE COURT: And when did they arrive in Moscow?

14 MR. ISRAEL: They were there before I was here the  
15 last time. They've always been there. They're with a  
16 reputable jewelry dealer in Moscow.

17 THE COURT: Would that reputable jewelry dealer be  
18 willing to send them back?

19 MR. ISRAEL: I haven't spoken to the reputable  
20 jewelry dealer. And I would say that there are a whole  
21 bunch of transactions here that are involved that you don't  
22 know about, that haven't been presented to you, that affect  
23 the disposition of the gems. That it's not the way it was  
24 presented to you just a moment ago --

25 THE COURT: Mm hmm.

1 MR. ISRAEL: -- this cut and dry claim that the  
2 Plaintiff has. There's more to it than that, which I think  
3 we would get to with the --

4 THE COURT: Okay. Well, look, I don't know what I  
5 don't know. I gave you a copy of my schedule.

6 MR. ISRAEL: And I wrote all over it,  
7 unfortunately.

8 THE COURT: You wrote all over it?

9 WOMAN: (indiscernible)

10 THE COURT: In here?

11 WOMAN: Yes (indiscernible).

12 THE COURT: Okay. So, let's make -- let's have a  
13 clear --

14 WOMAN: (indiscernible)

15 THE COURT: Let's have a clear record. So, the  
16 four stones that you're talking about are on this schedule.  
17 They're the first three items, right?

18 MR. ISRAEL: Actually, everything on the schedule  
19 is with the same person in Moscow, Anna (indiscernible).

20 THE COURT: You --

21 MR. ISRAEL: But apparently --

22 THE COURT: You --

23 MR. ISRAEL: I understand what I said last time,  
24 but apparently --

25 MR. GOODMAN: There's a restraint.

1 THE COURT: Hold --

2 MR. ISRAEL: Well, they haven't been moved. They  
3 haven't moved --

4 MS. CASSIRER: There's a bankruptcy stay.

5 THE COURT: Well, hold on --

6 MR. ISRAEL: They haven't --

7 THE COURT: Hold on, hold on. We were all here,  
8 and you told me --

9 MR. ISRAEL: I know.

10 THE COURT: -- that you had the last two.

11 MR. ISRAEL: But I --

12 THE COURT: That your client had the last two.

13 MS. CASSIRER: What I meant to -- what I said was  
14 that my client wouldn't transfer them. They wouldn't do  
15 anything -- they would stay -- they were already in Moscow  
16 at the time.

17 THE COURT: That's not what you said, Mr. Israel.

18 MR. ISRAEL: Your Honor, I'm just talking to my  
19 client and I'm reporting to you what my client is telling me  
20 in real time. And the fact that --

21 THE COURT: We had a TRO hearing.

22 MR. ISRAEL: That's right.

23 THE COURT: We had a TRO hearing and you were  
24 under an obligation to have answered my questions  
25 truthfully. You --



1 MR. ISRAEL: Your Honor, if you think that I  
2 wasn't answering your questions truthfully, that's --

3 THE COURT: You gave me the clear impression that  
4 those last two stones were still in the possession and  
5 control of your client.

6 MR. ISRAEL: Your Honor, they are within my  
7 client's control, Your Honor. That's what I was trying to  
8 say --

9 THE COURT: Great. Then let's get them back,  
10 right?

11 MR. ISRAEL: That's what I was trying --

12 MR. GOODMAN: Your Honor, if I could just point  
13 you to the transcript for that last hearing, Pages 17, Line  
14 5-7, Mr. Israel said, "We have possession of those."

15 MR. ISRAEL: Right. And we do. They're just in  
16 Moscow.

17 THE COURT: But wait. Then if we do, and they're  
18 just in Moscow, then we -- meaning you and your client --  
19 will get them back right away. Otherwise you made a false  
20 representation to me.

21 MR. ISRAEL: I did not make a false  
22 representation, Your Honor.

23 THE COURT: You said --

24 MR. ISRAEL: I'm sorry. I just did not make a  
25 false representation. I was here with my client. I was

1 asking my client questions. And I was reporting to you what  
2 I was told --

3 THE COURT: And you don't think that at that  
4 moment, I would have wanted to hear the words, all of these  
5 gems are in Moscow?

6 MR. ISRAEL: And I didn't know that they were all  
7 in Moscow --

8 THE COURT: You represented to me that they are in  
9 our possession.

10 MR. ISRAEL: That's what --

11 THE COURT: -- the "our" could not reasonably be  
12 construed to include somebody in Moscow.

13 MR. ISRAEL: They have an affiliate in Moscow,  
14 which --

15 THE COURT: Great. So, if they have an affiliate  
16 in Moscow, then I want them back.

17 MR. ISRAEL: I understand, Your Honor. I'm  
18 hearing what you're saying. So, I'm not -- I want to just  
19 be clear on one thing, because you said that I may have  
20 misrepresented. I did not misrepresent anything. I was  
21 asking my client questions. We have the gems where --

22 THE COURT: Then your client misrepresented.  
23 That's even better.

24 MR. ISRAEL: No, there might have a breakdown in  
25 the way we were communicating. My understanding was that

1       they are within his control, and it's my understanding that  
2       they still are within his control, the last two gems. And  
3       you are right. There shouldn't be any problem bringing them  
4       back into the country. I don't see a problem with that,  
5       from what --

6               THE COURT: Right. Give me a date certain when  
7       they're going to come back.

8               MR. ISRAEL: Well, my client is just about to take  
9       off for a vacation that takes him through the end of the  
10       month. So, can we say September 7th?

11              MS. CASSIRER: No, we can't say September 7th.  
12       There's this great thing. It's called email and telephone.  
13       Okay? It does not require a long time. He needs to do what  
14       is necessary right away to get those back. Otherwise, the  
15       representation that there in his possession and control,  
16       which you just said --

17              MR. ISRAEL: I did make -- yes.

18              THE COURT: -- and you also used the word  
19       affiliate, then that would turn out to be false. And the  
20       U.S. Trustee is sitting here, and the U.S. Trustee has its  
21       own purview and its own view about how people conduct  
22       themselves in connection with a bankruptcy proceeding.

23              MR. ISRAEL: I totally hear everything you're  
24       saying.

25              THE COURT: are you hearing what I'm saying?

1 MR. ISRAEL: I'm totally hearing what you're  
2 saying. And Your Honor, I would never say anything to  
3 knowingly deceive the Court or --

4 THE COURT: I have --

5 MR. ISRAEL: -- and I don't think I was being  
6 reckless either. So, we'll make sure the gems are brought  
7 back to the states.

8 THE COURT: Excellent.

9 MS. CASSIRER: Your Honor, I would like everything  
10 back --

11 THE COURT: Things are always a little wild in  
12 Bankruptcy Court.

13 MS. CASSIRER: Oh, this is beyond wild. This  
14 borders on criminal. He had no right to dispose of these.  
15 He had no right to ship or sell them to anyone under the  
16 consignment agreement.

17 THE COURT: Look, here's the thing, okay? I'm  
18 dealing with the facts on the ground.

19 MS. CASSIRER: Right.

20 THE COURT: Okay. I don't know what the right  
21 answer is on the history. Mr. Israel as a version. You  
22 have a version. Okay? I know that you say you're right.  
23 He says that he's right. But we have these gems and we've  
24 now ascertained that they are in Moscow --

25 MS. CASSIRER: Perhaps.

1 THE COURT: -- and -- well --

2 MS. CASSIRER: We've already proved that --

3 THE COURT: -- a representation has been made that  
4 they're in Moscow with a "reputable jeweler", who is an  
5 affiliate of the principal either of Essex, or a principal  
6 of the asset.

7 MS. CASSIRER: May we have --

8 THE COURT: And I have directed that they be  
9 returned. And Mr. Israel has said, okay. So, next we're  
10 going to see what happens. It doesn't require not taking  
11 vacation. I'm not a vacation spoiler. But presumably,  
12 there's a way to get them back from Moscow with all  
13 deliberate speed, so --

14 MS. CASSIRER: Your Honor --

15 THE COURT: Go ahead.

16 MS. CASSIRER: May I just clarify that that ruling  
17 applies to all the gems on the schedule?

18 THE COURT: It's not -- well, I characterize it as  
19 a ruling. It's a direction from the Court.

20 MR. ISRAEL: But Your Honor, not --

21 MS. CASSIRER: That it applies to all of these.

22 THE COURT: All of them.

23 MR. ISRAEL: Not all the gems. The last two are  
24 the ones that we said were available. The ones on top we  
25 said weren't available. And the reason I said they weren't

1       available is because they went to pay down the loan that  
2       they were secured by. So, the gems were securing the loan.  
3       The loan defaulted. We have checks that show that instead  
4       of continuing to repay the loan, my client was instructed to  
5       keep the gems.

6               THE COURT: Well, now you're into the merit --

7               MR. ISRAEL: But --

8               THE COURT: Now you're into the merits of the  
9       action.

10              MR. ISRAEL: I understand that. But I'm only  
11       pointing out why it is that only some of the gems -- I  
12       represented last time that some of the gems could be frozen.  
13       And I'm standing by that today and saying the frozen gems  
14       could be brought back to the States. The other ones that my  
15       client no longer owns, I never said he could transfer them.  
16       I said the opposite. And today, to say that my client  
17       should return all of them would exceed the parameters of  
18       what we are talking about. Do you know what I'm saying?

19              THE COURT: I understand what you're saying. But  
20       every time you tell me something, the ground is shifting.  
21       Everything is shifting. I find it very bizarre.

22              MR. ISRAEL: How has it shifted from what I just  
23       said? I mean, the last time I was here I said that they  
24       were available and could be frozen, the bottom two. I'm  
25       saying today that they were frozen and that they could be

1 returned. I said the top ones, he doesn't have anymore.

2 And I'm not saying anything inconsistent today, am I?

3 MS. CASSIRER: Your Honor, what he said in that  
4 hearing, he didn't really know, but it was represented to  
5 him that they were in transit. This was after the  
6 bankruptcy. We asked for those consigned goods back on May  
7 29th, the day after the filing. The consignment agreement  
8 says you can't sell those goods, you can't use them in any  
9 way.

10 THE COURT: When did the gems go to Moscow?

11 MR. ISRAEL: I have to ask my client.

12 MS. CASSIRER: Yeah, we need shipping information,  
13 Your Honor.

14 MR. ISRAEL: June 3rd.

15 THE COURT: All six of them?

16 MS. CASSIRER: When was it?

17 MR. ISRAEL: All of them, June 3rd.

18 MR. GOODMAN: Your Honor, the case was filed May  
19 28th. The demand was made originally May 29th.

20 MR. ISRAEL: Your Honor, that may be the case, but  
21 that's when --

22 MR. GOODMAN: There was an automatic stay.

23 MR. ISRAEL: That may be the case, when the case  
24 was filed. I don't think I was working on it then. And I  
25 think that the only thing that involved me in this issue was

1       --

2               THE COURT: This is not about you. This is --

3               MR. ISRAEL: No, I know it's not.

4               THE COURT: Okay.

5               MR. ISRAEL: But the only thing that I represented  
6 took place at our hearing, and had to do with --

7               THE COURT: I'm going to move away from that.

8               MR. ISRAEL: Okay.

9               THE COURT: There was property of the Debtor that  
10 was sent out of the country.

11              MR. ISRAEL: It's not property of the Debtor that  
12 first (indiscernible). So, one of the gems, they concede  
13 that they don't own at all. So, it's not property of the  
14 Debtor. It's --

15              MS. CASSIRER: Your Honor, it is property of the  
16 Debtor. Both parties have consignment and a financial  
17 interest of D&M. And even in the ruby, we had a proper  
18 participation. There's a (indiscernible) history.

19              MR. ISRAEL: No, it's not.

20              MS. CASSIRER: They engaged in a violation of the  
21 bankruptcy stay.

22              MR. ISRAEL: It's not the case --

23              THE COURT: Mr. Israel, I want those gems back. I  
24 want them back in the United States.

25              MR. ISRAEL: I understand.



1 THE COURT: Okay. So, while we're arguing about -  
 2 - with all of this, I want them back. Because the next  
 3 thing that's going to happen is they're not going to be  
 4 there. So, I want them back. Do you understand, sir? Do  
 5 you understand what I'm saying?

6 MR. PAUL: Yeah, I understand.

7 THE COURT: Do you understand that I am ordering  
 8 you to have those gems returned to the United States and to  
 9 be deposited --

10 MR. PAUL: The problem, I have to pay people the  
 11 money to get them back.

12 MR. ISRAEL: The top three that I was talking  
 13 about before that I said we don't own anymore, that's what  
 14 he's referring to.

15 MR. PAUL: I have to pay --

16 THE COURT: You sold them to those people?

17 MR. PAUL: I bought those stones. I bought the  
 18 stones from D&M Capital. D&M Capital delivered it to me.  
 19 Thus, the stones, overcharged the --

20 THE COURT: I don't want to hear about  
 21 overcharging.

22 MR. PAUL: Okay. Delivered me --

23 THE COURT: You sent the stones to Moscow?

24 MR. PAUL: Correct.

25 THE COURT: Did you get money back?

1 MR. PAUL: Sorry?

2 THE COURT: Did you sell those to somebody?

3 MR. PAUL: No, I owe people almost \$17-18 million.

4 THE COURT: You gave people those stones because  
5 you owed them money?

6 MR. PAUL: Because their money (indiscernible).

7 MS. CASSIRER: Your Honor, the other date certain  
8 --

9 MR. PAUL: (indiscernible) people --

10 THE COURT: Hold on.

11 MR. PAUL: I borrowed almost \$17-18 million from  
12 people to give to D&M Capital and other peoples. And this  
13 was in my safe deposit always for 7-8 years.

14 THE COURT: Okay. We're into all kinds of stories  
15 here. Does it remain the case that the two stones that it  
16 was represented were in -- that were not going to be  
17 transferred, that were in his possession and control, can  
18 those come back from Moscow?

19 MR. ISRAEL: Yes. That's what I was saying.

20 MR. PAUL: There's a spreadsheet from D&M Capital  
21 they made (indiscernible) first two payments, \$300,000.

22 THE COURT: Okay, please, please, please.

23 MR. PAUL: I borrow --

24 MR. ISRAEL: Stop, stop. She doesn't want to hear  
25 from you right now.

1 THE COURT: Please, have a seat.

2 MR. ISRAEL: Sit down.

3 THE COURT: Thank you. All right. The two stones

4 --

5 MR. ISRAEL: Yes.

6 THE COURT: -- I want back.

7 MR. ISRAEL: Okay.

8 THE COURT: All right? Do you understand? I want  
9 back. I want them to be shipped back by the end of this  
10 week. Okay?

11 MR. ISRAEL: Okay.

12 THE COURT: They come to you.

13 MR. ISRAEL: To me personally?

14 THE COURT: Well --

15 MR. ISRAEL: All right.

16 THE COURT: I'm happy to have them come to them.  
17 They can put them in their vault.

18 MR. ISRAEL: I'll put them in a bank. I'll put  
19 them in a bank.

20 MS. CASSIRER: Your Honor, I would prefer to have  
21 them in our possession, rather than his.

22 MR. ISRAEL: And I would prefer to have them in my  
23 possession because they haven't won a judgment yet, and  
24 they're not their gems yet. And I'll put them in a box.  
25 And obviously, nothing's going to happen to them.

1 THE COURT: Well, how will they be insured?

2 MR. ISRAEL: I'll get insurance for them.

3 MS. CASSIRER: Your Honor, he wants -- how much  
4 insurance does he have now? I want to know. Because we'll  
5 go after his insurance if that happens.

6 THE COURT: At this level, I want you to work this  
7 out. All right? I have directed and it's been clarified  
8 what stones can come back. We have those two stones.

9 MS. CASSIRER: I'm sorry. One more question.

10 THE COURT: Yes.

11 MS. CASSIRER: Besides the other two stones, the  
12 only representation that Mr. Paul basically "sold" those  
13 other goods in exchange for this huge debt that he had to  
14 Russians was as to the two capstones, not all four, as I  
15 understand it.

16 THE COURT: He's telling me --

17 MS. CASSIRER: Just the ones that were supposedly  
18 --

19 THE COURT: I took the statements to mean all  
20 four.

21 MS. CASSIRER: Well, I -- could we have  
22 clarification on that?

23 MR. ISRAEL: And that's what we did the last time.  
24 We had separated all four -- we separated the top four from  
25 the bottom two, and what I'm saying is consistent with what

1 I said last time, that the bottom two are within in custody  
2 and control and can be returned.

3 THE COURT: Right. So, not the top four?

4 MR. ISRAEL: That's right.

5 MS. CASSIRER: So, he used those to pay his own  
6 debts? Okay. So, by the end of the week, Your Honor --

7 THE COURT: By the end of the week --

8 MS. CASSIRER: -- they have to be shipped here?

9 THE COURT: -- they need to be in transit to the  
10 United States. And you need to get shipping tracking  
11 information.

12 MS. CASSIRER: For all of them?

13 THE COURT: For the two that we're getting back.

14 MS. CASSIRER: Then may I also have the  
15 information as to where these goods are and how they were  
16 shipped to begin with?

17 THE COURT: Yes.

18 MS. CASSIRER: Immediately?

19 THE COURT: Yeah.

20 MS. CASSIRER: Thank you, Your Honor.

21 THE COURT: Okay. Before we can sort out owes  
22 what to whom, you know, the point of what we did at the TRO  
23 hearing was I was accepting what you said, Mr. Israel, at  
24 face value. We'll leave for another day, accurate,  
25 inaccurate. I was certainly not under the impression that

1 we were talking about millions of dollars of gems being in  
2 Moscow. We're going to put that to one side.

3 We're going to get those two stones back. You're  
4 going to secure them in your vault, in your safe deposit  
5 box. They're going to be fully insured. You're going to  
6 provide transit information to counsel for the Debtor.  
7 You're going to provide proof of insurance. And then we're  
8 going to move forward.

9 They're going to serve discovery requests on you.  
10 You're going to comply with the discovery requests by the  
11 end of the day on the Friday after Labor Day, which is  
12 September 6th.

13 You're going to work out between both sides dates  
14 for your clients to make themselves available for a  
15 deposition. All right? Your client would like to talk to  
16 you.

17 MR. ISRAEL: What do I do? Can I take a second to  
18 talk?

19 THE COURT: You can talk to him. Yes. Mm hmm.

20 MR. ISRAEL: I'm sorry --

21 THE COURT: No, we're good. New facts?

22 MR. ISRAEL: No new facts. You gave us until the  
23 end of the week to transfer the -- to have them in transit.  
24 They will be in transit before the end of the week back to  
25 the States.

1 THE COURT: And will they -- and how will they be  
2 insured while they're in transit?

3 MR. ISRAEL: We'll arrange for insurance. It's my  
4 client's business. I'm sure that my client knows how to  
5 arrange for insurance for transferring --

6 THE COURT: You know, I never assume anything,  
7 though. I just -- I want to be sure that they are insured  
8 while they are in transit --

9 MR. ISRAEL: We will --

10 THE COURT: -- because things happen.

11 MR. ISRAEL: We'll make sure that they are insured  
12 while they're in transit, Your Honor.

13 THE COURT: Okay. I want to be very clear that  
14 this is a serious situation. I know that you have your  
15 version of the facts, they have their version facts, but  
16 this is a bankruptcy estate. Eventually, we're going to  
17 determine what the real facts are.

18 If it is determined that in fact those gems were  
19 transferred after the case was filed, then that's a big  
20 problem.

21 MR. ISRAEL: They were not. But I understand what  
22 --

23 THE COURT: You literally told me 10 minutes ago  
24 that they were.

25 MR. ISRAEL: Oh, I'm sorry. I meant after the TRO

1 was entered. That's what I was thinking.

2 MS. CASSIRER: After the bankruptcy was filed.

3 MR. ISRAEL: No, that's what --

4 THE COURT: After the bankruptcy case was filed.

5 MR. ISRAEL: That's what I'm saying.

6 THE COURT: Which as you know --

7 MR. ISRAEL: Okay.

8 THE COURT: -- once a bankruptcy case is filed,  
9 it's a violation of the automatic stay to transfer property  
10 of the Debtor --

11 MR. ISRAEL: It's property of the Debtor, yes.

12 THE COURT: -- if it's property of the Debtor.  
13 Absolutely.

14 MR. ISRAEL: Right.

15 THE COURT: I know it's your position that it  
16 wasn't, but that all remains to be seen. I think we ought  
17 to assume that this should be on a -- consistent with the  
18 Federal Rules of Civil Procedure. This ought to be on a  
19 fast track for disposition. Okay? It's a relatively narrow  
20 universe of facts and we need to get it sorted out sooner  
21 rather than later. All right?

22 MR. ISRAEL: Okay, Your Honor --

23 THE COURT: Yeah.

24 MR. ISRAEL: May I just say one other --

25 THE COURT: Sure.



1           MR. ISRAEL: If I gave you the impression that I  
2 wasn't taking this very, very seriously, I apologize for  
3 that because --

4           THE COURT: You did. But it also seems --

5           MR. ISRAEL: Because --

6           THE COURT: It also seems clear -- and I'm trying  
7 to say this nicely -- that you had alarmingly few facts from  
8 your client, which I think is unfortunate. So, he's here  
9 today. I don't know what your communications are with him.  
10 I'm not going to invade your attorney-client privilege. But  
11 I strongly suggest you do a very thorough debrief with him  
12 so that you, as an officer of the court, are familiar with  
13 what the facts are. All right?

14          MR. ISRAEL: I understand, Your Honor.

15          THE COURT: Okay. All right. Yes, sir?

16          MR. MULLER: My name is Andrew Muller. I'm an  
17 attorney at Platzer Swergold. My clients are Ultimate  
18 Jewelry Designs, LLC and Shanghai Pearls and Gems, Inc. --

19          THE COURT: Okay.

20          MR. MULLER: -- locally known as Ultimate Diamond.  
21 We have a participation interest in the two stones that are  
22 the topic of discussion here. And so --

23          THE COURT: The ones that are coming back?

24          MR. MULLER: That's correct.

25          THE COURT: Okay.

1 MR. MULLER: And I want to confirm that Ultimate  
2 Diamond will be named as an insured party on the policy  
3 covering the stones while they're in transit, et cetera.

4 THE COURT: Very good point.

5 MR. GOODMAN: Your Honor, we have no objection.

6 THE COURT: Okay. So, what you should do is  
7 communicate, get together, communicate. I think the Debtor  
8 should communicate to Mr. Israel who that universe should be  
9 with respect to each of the two stones that are coming back  
10 to the United States.

11 MR. MULLER: Thank you.

12 THE COURT: All right. That's an excellent point.  
13 Okay. Sir?

14 MR. MEDINA: Your Honor, may I be heard?

15 THE COURT: Yeah.

16 MR. MEDINA: Good morning, Your Honor. Eric  
17 Medina --

18 THE COURT: Yeah. Talk into a microphone.  
19 Otherwise, we will be recording you.

20 MR. MEDINA: Good morning, Your Honor. Eric  
21 Medina. I'm here today on behalf of Mr. Spector  
22 individually.

23 THE COURT: Yeah.

24 MR. MEDINA: I just ask that with respect to Your  
25 Honor's order, if we could just have Mr. Israel's office

1       copy us on the correspondence with respect to when it's  
2       going to be shipped and all that.

3               THE COURT:   Absolutely.   Okay.

4               MR. MEDINA:   Thank you.

5               THE COURT:   All right.   I'm so ordering the record  
6       today with respect to everything that we have discussed and  
7       that I've directed.   You don't have to submit a further  
8       order.

9               MS. CASSIRER:   Thank you, Your Honor.

10              THE COURT:   All right?

11              MS. CASSIRER:   Your Honor, may we have another  
12       conference with you scheduled so that we can --

13              THE COURT:   Sure.

14              MS. CASSIRER:   -- make sure that we know --

15              THE COURT:   Yep.

16              MS. CASSIRER:   -- everything is set?

17              THE COURT:   Yep.   Let me get my calendar out.

18              MR. FERDINANDS:   Your Honor, this is Paul  
19       Ferdinands, with King & Spalding, representing Radwan  
20       Diamond & Jewellery Trading.   Could I be heard, Your Honor?

21              THE COURT:   Sure.

22              MR. FERDINANDS:   First of all, I'd like to thank  
23       the Court for letting me participate by phone.

24              THE COURT:   Of course.

25              MR. FERDINANDS:   Radwan is one of the parties that

1 has a participation interest in the diamonds or other  
2 jewelry that were held by the Debtor. This is obviously a  
3 very disturbing situation. There are several things that  
4 appear to be undisputed, or at least not subject to a good  
5 faith dispute.

6 First, Essex Global Trading, in the adversary  
7 proceeding, has a principal, Alecks Paul, that is a  
8 convicted felon.

9 THE COURT: All right. We --

10 MR. FERDINANDS: That is a matter of public  
11 record.

12 THE COURT: We've covered that ground. It's  
13 frankly neither here nor there. But go ahead.

14 MR. FERDINANDS: Well, I think it is relevant,  
15 Judge, because at the end of the day, Essex had possession  
16 of all of these diamonds or other jewelry that are the  
17 subject of the adversary proceeding. They've never disputed  
18 that they had possession of those.

19 They're now claiming they've transferred some of  
20 them, despite the fact that the case was filed in May.  
21 They've been unable or unwilling to provide an accounting  
22 regarding where they are, if he has possession of them, if  
23 they were sold, who bought them, for what price, where are  
24 the proceeds, et cetera.

25 And we share the Court's concern that Essex and

1 its principal don't appear to be taking this proceeding  
2 seriously and don't appear to respect the fact that this is  
3 a Federal court.

4 THE COURT: Hold on. If that was the case before,  
5 it's not the case anymore. It's very clear here in the  
6 courtroom that everyone is taking this quite seriously. So,  
7 I hear you and I appreciate your concern. We've hit the  
8 reset button today and at the first hearing, everything was  
9 a little, not crisp I'll say. And now on the Debtor's side,  
10 a lot more work has been done and we have a very clear path  
11 forward.

12 In the courtroom today, I've communicated in no  
13 uncertain terms, and the presence of the Office of the U.S.  
14 Trustee, that this is a very serious matter, and that I've  
15 urged Mr. Israel to spend more time with his client  
16 gathering the facts. As you heard, I wasn't interested in  
17 there being lengthy delays to begin to get to the bottom of  
18 this.

19 So, are you a participant, did you say, in the two  
20 stones that are coming back to the United States?

21 MR. FERDINANDS: No, Your Honor.

22 THE COURT: No.

23 MR. FERDINANDS: We are participants in the ones  
24 that have been absconded with.

25 THE COURT: Okay. All right. So, is there

1 something specific, other than bringing -- than making a  
2 record with respect to your interest here? Is there  
3 something specific that you're asking for?

4 MR. FERDINANDS: I'm just wondering whether the  
5 Court should consider contacting the U.S. Attorney's Office  
6 and getting them involved in investigating potential  
7 criminal activity.

8 THE COURT: Mr. Morrissey, who is with the Office  
9 of the United States Trustee, which as you know is an arm of  
10 the Justice Department, he is in the position to take this  
11 up to the extent that he believes that there was any  
12 criminal activity. This Court does not make referrals  
13 directly to the U.S. Attorney's Office under these  
14 circumstances.

15 The U.S. Trustee is here, and I can represent to  
16 you is paying attention. If you would like to discuss that  
17 further with the Office of the U.S. Trustee, I'm sure Mr.  
18 Morrissey or his colleagues would be happy to talk to you.

19 I'm taking this very seriously. I think everyone  
20 in the courtroom is taking it very seriously.

21 MR. FERDINANDS: And I certainly appreciate that,  
22 Your Honor, as Judge, and so I appreciate the opportunity to  
23 be heard. And I can reach out to Mr. Morrissey.

24 THE COURT: Okay. The amended complaint was set  
25 for a pretrial on September 26th, Thursday, September 26th.

1 Can we use that date?

2 MS. CASSIRER: I would like to see it sooner, Your  
3 Honor, because I suspect we're going to have other issues.

4 THE COURT: Hold on one second.

5 MS. CASSIRER: If it's possible.

6 THE COURT: Hold on one second.

7 MS. CASSIRER: Thank you.

8 THE COURT: September 10th? Tuesday.

9 MS. CASSIRER: Thank you, Your Honor. That works.

10 THE COURT: Let Mr. Israel check his calendar. It  
11 would be at 3:30 in the afternoon. Mr. Morrissey --

12 MR. ISRAEL: September 10th, you said?

13 THE COURT: Yeah. It's a Tuesday. Does that work  
14 for you, do you think?

15 MR. MORRISSEY: Your Honor, I show to have a  
16 disclosure statement hearing in the (indiscernible) case,  
17 but that's at 10:00, so --

18 THE COURT: It should be over by then.

19 MR. MORRISSEY: I certainly hope so, Your Honor.

20 MR. ISRAEL: Works for me, Your Honor.

21 THE COURT: Okay, great. September 10th at 10:30.  
22 That will have been after the date for completion of  
23 document discovery. And you all are going to work together  
24 on the deposition dates. If you have any problems figuring  
25 that out, you can always contact us.

1 MR. GOODMAN: To your point --

2 THE COURT: What else?

3 MR. GOODMAN: Your Honor, Brett Goodman, of  
4 Troutman, for --

5 THE COURT: Yeah.

6 MR. GOODMAN: -- proposed counsel for the Debtor.  
7 Just two points. The first, respect to the so ordered  
8 record --

9 THE COURT: Yes.

10 MR. GOODMAN: -- which is now pretty lengthy, to  
11 the extent that it is not complied with and we do not  
12 receive all of the confirmation and documentation that Your  
13 Honor directed Essex to provide, should we just file a  
14 letter or reach out directly to chambers? Because we may  
15 need to have an emergency conference --

16 THE COURT: Okay.

17 MR. GOODMAN: -- with the Court.

18 THE COURT: Let's take one thing at a time. So, I  
19 think the record today is voluminous, but it's clear. I  
20 have directed that by Friday, the two gems that are last  
21 listed on the schedule to order disposing the TRO, be put in  
22 transit from Moscow, where it has been represented that they  
23 are, to the United States, to Mr. Israel. Proof -- tracking  
24 information will be provided to counsels for the Debtor, and  
25 proof of insurance will be provided. That insurance will



1 name as beneficiaries all the participants in the stones  
2 that are being sent. All right?

3 So, that's the clear and concise unambiguous  
4 statement of what I have ordered. To the extent that that  
5 is violated, that would form a predicate for an order to  
6 show cause as to why there should not be issued an order of  
7 contempt. The law requires that there be a clear and  
8 unambiguous order that is not followed. So, I have just  
9 made a record as to what the clear and unambiguous order is.

10 MR. ISRAEL: Your Honor, just one thing I would  
11 ask is that the Plaintiff, or the Debtor, provide me with  
12 the names and all the critical data for the participants in  
13 the gems --

14 THE COURT: Yes.

15 MR. ISRAEL: -- just so there's no dispute about  
16 it, and they can be included as insureds.

17 THE COURT: Yes.

18 MR. MULLER: I was going to say, Your Honor, I  
19 would like all of that information provided to my office as  
20 well --

21 THE COURT: Of course.

22 MR. MULLER: -- since we are direct participants -  
23 -

24 THE COURT: Yes.

25 MR. MULLER: -- but not necessarily standing in

1 the shoes of the Debtor.

2 THE COURT: Yes.

3 MR. MULLER: Thank you.

4 THE COURT: That as well. All right?

5 MR. GOODMAN: Your Honor, I think that covers  
6 everything --

7 THE COURT: Okay.

8 MR. GOODMAN: -- other than -- I think we had also  
9 requested the shipping information with respect --

10 THE COURT: Yes. I said tracking information.

11 MR. GOODMAN: -- with respect to other four pieces  
12 be provided.

13 THE COURT: Right. But that's going to -- I'm  
14 going to put that in with your general discovery request.

15 MR. GOODMAN: Okay.

16 THE COURT: All right? Because that is what it  
17 is. That's not these gems that I've been told we can get  
18 back that we need to get back.

19 MR. GOODMAN: Understood, Your Honor.

20 THE COURT: All right?

21 MR. GOODMAN: Okay.

22 THE COURT: I think were done. Mr. Morrissey?

23 MR. GOODMAN: I have one other --

24 THE COURT: Okay.

25 MR. GOODMAN: I did say I have one other thing --

1 THE COURT: One other thing?

2 MR. GOODMAN: -- and it's almost comical, I think,  
3 related to everything else going on. We filed a retention  
4 application --

5 THE COURT: Yes, you filed a retention  
6 application. U.S. Trustee, no objection? Do you know?

7 MR. GOODMAN: The U.S. Trustee has reviewed our --

8 MR. MORRISSEY: The U.S. Trustee has reviewed the  
9 retention papers. The U.S. Trustee has no objection. It  
10 does make clear that, I believe it's July 10th, is the  
11 effective date of the new retention and the cutting off of  
12 the old retention.

13 THE COURT: Very good. Okay. I just know that I  
14 haven't seen it yet. I'll take a look at it.

15 MR. GOODMAN: We filed yesterday. If Your Honor  
16 would like, we can put it on for presentment. Or if that's  
17 not necessary, we can just submit the order --

18 THE COURT: I've got the no objection from the  
19 U.S. Trustee. Send us an order to chambers, email, in Word,  
20 and I'll take a look at it and we'll get it entered.

21 MR. GOODMAN: Thank you, Your Honor.

22 THE COURT: All right?

23 MR. MORRISSEY: Your Honor, just one suggestion --

24 THE COURT: Sure.

25 MR. MORRISSEY: -- for the Court and the parties.

1       Given the gap in time between the time the two stones are  
2       supposed to be returned this coming Friday and the September  
3       10th hearing, I was just wondering whether the Court wanted  
4       a writing of some kind to be posted on the docket with an  
5       update regarding that. Perhaps positive news, as opposed to  
6       just negative news that it hasn't happened.

7               THE COURT: It's a good suggestion. Of course,  
8       it's great for creditors to be informed. I don't know how  
9       to do that, Mr. Morrissey. And I think that interested  
10      parties can always call counsel. So, it's an excellent  
11      suggestion, but I don't know how to effectuate that.

12             MR. MULLER: I was going to say, Your Honor, I  
13      have to echo the sentiment. It's merely an issue of  
14      receiving notice of confirmation that the stones have been  
15      received by Mr. Israel.

16             THE COURT: Oh, I misunderstood. That can be  
17      done. Debtor's counsel can file -- can send a letter to  
18      chambers and put on the docket indicating that the stones  
19      have been received. I thought, Mr. Morrissey, you were  
20      talking generally about everything that's going on.

21             MR. MORRISSEY: No, no, no. Just that one --

22             THE COURT: I'm sorry.

23             MR. MORRISSEY: -- (indiscernible) items.

24             THE COURT: I misunderstand. Debtor's counsel,  
25      can you put a status letter on the docket?

1 MR. GOODMAN: Your Honor, we're happy to file it.

2 THE COURT: Okay. I apologize.

3 MR. GOODMAN: I, of course, don't want to engage  
4 in a letter writing campaign.

5 THE COURT: No.

6 MR. GOODMAN: It'll be short and --

7 THE COURT: No, it's just --

8 MR. GOODMAN: -- and confirm it's --

9 THE COURT: -- to confirm that what I directed  
10 today happened or did not happen.

11 MR. GOODMAN: Correct.

12 THE COURT: Okay.

13 MR. GOODMAN: Happy to do that, Your Honor.

14 THE COURT: Okay. I think were done. Thank you  
15 all for your patience. And I'll see you -- I'll hear from  
16 you and then I'll see you again shortly after Labor Day.  
17 All right? Thank you very much.

18 ALL: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Whereupon these proceedings were concluded at  
21 12:33 PM)

22

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

Digitally signed by Sonya Ledanski  
Hyde  
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Date: August 15, 2019

<b>&amp;</b>	<b>2</b>	<b>7th</b> 4:15 35:10,11	<b>admission</b> 26:15
<b>&amp;</b> 5:8,10 7:18 51:19,20	<b>2006</b> 8:24	<b>8</b>	<b>admittedly</b> 16:21
<b>0</b>	<b>2012</b> 16:13 18:18	<b>875</b> 4:5	<b>adv</b> 1:4
<b>0104</b> 15:21	<b>2019</b> 2:5 7:23 9:13 16:18 62:25	<b>9</b>	<b>adversary</b> 7:10,11 7:16 9:14 13:19 14:3 16:25 52:6 52:17
<b>0105</b> 15:20	<b>21</b> 14:6	<b>9</b> 25:6,7	<b>affect</b> 30:22
<b>1</b>	<b>21st</b> 4:22	<b>90</b> 14:7 24:14	<b>affiliate</b> 34:13,15 35:19 37:5
<b>1.38</b> 15:20	<b>24</b> 11:7	<b>950,000</b> 11:2	<b>afternoon</b> 55:11
<b>1.4</b> 11:1	<b>26th</b> 54:25,25	<b>a</b>	<b>aggregate</b> 9:2
<b>10</b> 16:16 29:19 30:4 47:23	<b>27th</b> 18:24	<b>able</b> 12:20 26:11 26:24	<b>ago</b> 30:24 47:23
<b>100</b> 24:21	<b>28</b> 14:6	<b>absconded</b> 53:24	<b>agreement</b> 14:13 21:3 24:11 36:16 39:7
<b>10004</b> 2:3	<b>28th</b> 9:13 18:24 39:19	<b>absolute</b> 23:20 24:7	<b>agreements</b> 16:13
<b>10014</b> 4:23	<b>29th</b> 15:6 39:7,19	<b>absolutely</b> 13:20 16:6 27:9 48:13 51:3	<b>agrees</b> 15:2
<b>10016</b> 5:13	<b>3</b>	<b>accepting</b> 45:23	<b>ahead</b> 7:19 13:23 37:15 52:13
<b>10022</b> 4:6	<b>30</b> 18:14	<b>accomplish</b> 14:4	<b>al</b> 1:15
<b>10038</b> 5:4	<b>300</b> 62:22	<b>account</b> 9:8 16:5 16:23	<b>alarm</b> 10:19
<b>10174</b> 4:16	<b>300,000</b> 42:21	<b>accounting</b> 15:4 17:2 52:21	<b>alarmingly</b> 49:7
<b>10:00</b> 55:17	<b>33</b> 4:22 23:23	<b>accurate</b> 45:24 62:4	<b>alecks</b> 6:14 9:15 52:7
<b>10:30</b> 55:21	<b>330</b> 62:21	<b>achieved</b> 12:14	<b>alissa</b> 4:8
<b>10th</b> 7:23 55:8,12 55:21 59:10 60:3	<b>341</b> 13:5	<b>acknowledge</b> 20:13 21:11	<b>allegation</b> 23:3
<b>11</b> 8:25 9:13 12:7 12:12	<b>3:30</b> 55:11	<b>action</b> 23:5 24:22 25:8,11 38:9	<b>allegations</b> 23:18
<b>11.5</b> 11:13	<b>3rd</b> 39:14,17	<b>active</b> 10:19	<b>alleged</b> 9:11 14:16 24:9
<b>11501</b> 62:23	<b>4</b>	<b>activity</b> 54:7,12	<b>allisa</b> 6:17
<b>11:17</b> 2:6	<b>4</b> 11:3,4,22	<b>add</b> 8:24 13:14	<b>amended</b> 12:23 14:24 15:10 18:1 20:11,12,13 23:14 23:17 25:22 54:24
<b>12</b> 14:15,23	<b>405</b> 4:15	<b>addition</b> 11:6	<b>amount</b> 11:8
<b>12-16</b> 14:24	<b>475</b> 5:12	<b>additional</b> 9:20 11:19 23:18	<b>ancient</b> 21:17
<b>12:33</b> 61:21	<b>5</b>	<b>address</b> 25:16	<b>andrew</b> 5:15 49:16
<b>12th</b> 11:5 15:8	<b>5,530,000</b> 11:9	<b>adequate</b> 12:3	<b>anna</b> 30:11 31:19
<b>13</b> 2:5	<b>5-7</b> 33:14	<b>administrative</b> 12:24	<b>annexed</b> 14:25
<b>15</b> 62:25	<b>50</b> 23:23	<b>administrator</b> 16:22	<b>answer</b> 13:3 21:22 28:2 36:21
<b>17</b> 9:3 14:8 33:13	<b>5251</b> 15:22		
<b>17-18</b> 42:3,11	<b>541</b> 24:15		
<b>180</b> 5:3	<b>542</b> 24:16		
<b>18th</b> 5:12	<b>6</b>		
<b>19-01300</b> 1:4 3:3	<b>6.5</b> 16:10,12		
<b>19-11711</b> 1:3 3:1	<b>6th</b> 5:3 46:12		
	<b>7</b>		
	<b>7-8</b> 42:13		
	<b>7.5</b> 9:7 14:10 16:20		

<b>answered</b> 32:24 <b>answering</b> 33:2 <b>answers</b> 20:4 <b>anymore</b> 39:1 41:13 53:5 <b>apologize</b> 49:2 61:2 <b>apparently</b> 31:21 31:24 <b>appear</b> 52:4 53:1 53:2 <b>appearing</b> 7:18 <b>appended</b> 17:10 19:23,25 <b>application</b> 59:4,6 <b>applies</b> 37:17,21 <b>appreciate</b> 53:7 54:21,22 <b>approach</b> 28:21 29:10 <b>approximately</b> 11:1,1,3,7,9,13,22 <b>arguing</b> 41:1 <b>argument</b> 26:14 <b>arises</b> 16:12 <b>arm</b> 54:9 <b>armed</b> 10:19 <b>arrange</b> 47:3,5 <b>arrangement</b> 24:1 <b>arrive</b> 30:13 <b>ascertained</b> 36:24 <b>aside</b> 20:4 <b>asked</b> 39:6 <b>asking</b> 18:17 21:10 34:1,21 54:3 <b>aspects</b> 8:15 <b>asset</b> 37:6 <b>assets</b> 14:18 18:19 <b>assume</b> 27:15 47:6 48:17 <b>attention</b> 54:16	<b>attorney</b> 49:10,17 <b>attorney's</b> 54:5,13 <b>attorneys</b> 4:13,21 5:2,9 19:9 <b>august</b> 2:5 11:4 15:8 18:24 62:25 <b>aurora</b> 4:10 6:12 6:17 9:16 13:22 14:1 <b>automatic</b> 39:22 48:9 <b>available</b> 37:24,25 38:1,24 46:14 <b>avenue</b> 4:5,15 5:12	<b>basically</b> 16:7,18 18:13 19:10,12 44:12 <b>basis</b> 8:1 15:17 16:6 22:9 <b>begun</b> 11:19 <b>behalf</b> 7:18 50:21 <b>believe</b> 9:6 12:11 13:21 19:11 21:19 23:20 24:6,15 59:10 <b>believes</b> 12:6 54:11 <b>beneficiaries</b> 57:1 <b>benefit</b> 8:7 23:13 <b>better</b> 34:23 <b>beyond</b> 36:13 <b>big</b> 47:19 <b>bit</b> 6:8,9 23:7 <b>bizarre</b> 38:21 <b>boatload</b> 26:22 <b>borders</b> 36:14 <b>borrow</b> 28:21 42:23 <b>borrowed</b> 42:11 <b>bottom</b> 24:18 38:24 44:25 45:1 53:17 <b>bought</b> 41:17,17 52:23 <b>bowling</b> 2:2 <b>box</b> 43:24 46:5 <b>brand</b> 22:13 <b>break</b> 29:1,13 <b>breakdown</b> 34:24 <b>brett</b> 4:9 6:10,15 7:20 14:2,6 56:3 <b>bring</b> 20:25 21:1 22:4 23:4 24:22 25:11,23,23,25 <b>bringing</b> 35:3 54:1	<b>brought</b> 14:3 17:1 20:8 36:6 38:14 <b>building</b> 4:14 <b>bulk</b> 14:17 <b>bunch</b> 19:21 30:21 <b>business</b> 8:11,14 8:21 11:17,20 12:3,18 47:4 <b>busy</b> 12:23 <b>button</b> 6:7 53:8 <b>buyer</b> 16:20 <b>buying</b> 8:11 <b>buzz</b> 10:2
	<b>b</b>		<b>c</b>
	<b>b</b> 2:21 <b>b6</b> 18:14 <b>back</b> 7:24 15:11 15:13 16:13 17:2 18:18,19 24:2 25:2 27:12 29:14 29:19 30:4,18 33:9,19 34:16 35:4,7,14 36:7,10 37:12 38:14 39:6 40:23,24 41:2,4 41:11,25 42:18 43:6,9,9 44:8 45:13 46:3,24 49:23 50:9 53:20 58:18,18 <b>background</b> 8:10 17:4 <b>backwards</b> 8:8 <b>bank</b> 43:18,19 <b>bankruptcy</b> 1:1 2:1,23 15:5 32:4 35:22 36:12 39:6 40:21 47:16 48:2 48:4,8 <b>based</b> 15:15 24:5		<b>c</b> 2:22 4:1,25 6:1 62:1,1 <b>calendar</b> 51:17 55:10 <b>call</b> 16:7 60:10 <b>called</b> 10:5,18 35:12 <b>calls</b> 25:6,7 <b>campaign</b> 61:4 <b>capital</b> 1:8,12 7:22 12:1,9 41:18 41:18 42:12,20 <b>capstones</b> 44:14 <b>case</b> 1:3,4 6:7 7:9 7:13 8:7 9:13 11:25 12:11 13:1 13:4,11,21 20:2 24:23 39:18,20,23 39:23 40:22 42:15 47:19 48:4,8 52:20 53:4,5 55:16 <b>cases</b> 23:24 <b>cash</b> 12:3 <b>cassirer</b> 4:10 6:4 6:12,17,21 9:16 10:11 13:22,24 14:1,1 15:12,23



16:1 17:12,19,21 17:23 18:2,4,7,11 19:1,4,6,8,17 26:7 27:8,12 28:7 32:4 32:13 35:11 36:9 36:13,19,25 37:2 37:7,14,16,21 39:3,12,16 40:15 40:20 42:7 43:20 44:3,9,11,17,21 45:5,8,12,14,18 45:20 48:2 51:9 51:11,14,16 55:2 55:5,7,9 <b>cause</b> 57:6 <b>central</b> 29:12 <b>certain</b> 20:1 35:6 42:7 <b>certainly</b> 45:25 54:21 55:19 <b>certified</b> 62:3 <b>cetera</b> 50:3 52:24 <b>chambers</b> 56:14 59:19 60:18 <b>chapman</b> 2:22 <b>chapter</b> 8:25 9:13 12:7,12 <b>characterize</b> 37:18 <b>chase</b> 14:12 23:12 <b>check</b> 55:10 <b>checks</b> 38:3 <b>chrysler</b> 4:14 <b>circumstances</b> 54:14 <b>civil</b> 48:18 <b>claim</b> 31:1 <b>claiming</b> 52:19 <b>claims</b> 12:21,21 16:8 24:7,15 <b>clarification</b> 44:22	<b>clarified</b> 44:7 <b>clarify</b> 37:16 <b>clear</b> 31:13,15 33:3 34:19 47:13 49:6 53:5,10 56:19 57:3,7,9 59:10 <b>clerk</b> 30:6 <b>client</b> 20:3,23 22:1 24:1 27:22 28:5,6 29:16 32:12,14,19,19 33:5,18,25 34:1 34:21,22 35:8 38:4,15,16 39:11 46:15 47:4 49:8 49:10 53:15 <b>client's</b> 26:10 33:7 47:4 <b>clients</b> 46:14 49:17 <b>close</b> 16:16 <b>closes</b> 10:5 <b>colleague</b> 7:15 <b>colleagues</b> 6:17 54:18 <b>combination</b> 10:20 12:14 <b>come</b> 29:5,19 30:4 35:7 42:18 43:12 43:16 44:8 <b>comical</b> 59:2 <b>coming</b> 49:23 50:9 53:20 60:2 <b>commenced</b> 9:14 <b>commitment</b> 12:7 <b>commitments</b> 26:10 <b>committee</b> 13:15 <b>communicate</b> 50:7,7,8 <b>communicated</b> 53:12	<b>communicating</b> 34:25 <b>communications</b> 49:9 <b>company</b> 20:22 <b>complaint</b> 12:23 14:15,24 15:10 17:3 18:1,6 20:11 20:12,13 23:14,17 23:18 25:22 54:24 <b>completed</b> 13:5 18:24 <b>completion</b> 55:22 <b>complied</b> 56:11 <b>comply</b> 46:10 <b>component</b> 8:21 <b>concede</b> 40:12 <b>concern</b> 27:8,10 52:25 53:7 <b>concise</b> 57:3 <b>concluded</b> 61:20 <b>conduct</b> 9:12 35:21 <b>conducted</b> 11:16 13:5 <b>conference</b> 3:1,3 7:7 9:17 29:14 51:12 56:15 <b>confessed</b> 16:22 <b>confident</b> 12:19 <b>confirm</b> 50:1 61:8 61:9 <b>confirmation</b> 56:12 60:14 <b>connection</b> 8:1 9:5,17 35:22 <b>consider</b> 54:5 <b>consigned</b> 14:8 39:6 <b>consignee</b> 24:25 <b>consignment</b> 8:19 8:21,25 11:5,8,9 11:20,23 14:13,20	24:2,4 36:16 39:7 40:16 <b>consignments</b> 14:23 <b>consignor</b> 24:24 <b>consistent</b> 44:25 48:17 <b>construed</b> 34:12 <b>contact</b> 55:25 <b>contacting</b> 54:5 <b>contained</b> 14:15 <b>contempt</b> 57:7 <b>continuation</b> 12:17 <b>continue</b> 12:2 <b>continuing</b> 38:4 <b>contribution</b> 12:6 <b>contributions</b> 12:1,9 <b>control</b> 33:5,7 35:1,2,15 42:17 45:2 <b>converted</b> 9:8 <b>conveyance</b> 24:9 <b>convicted</b> 52:8 <b>copy</b> 15:10 31:5 51:1 <b>correct</b> 16:2 18:7 23:15 41:24 49:24 61:11 <b>correspondence</b> 51:1 <b>cost</b> 10:25 <b>counsel</b> 4:4 6:11 6:16 7:21,22,23 12:24 15:15 22:22 46:6 56:6 60:10 60:17,24 <b>counsels</b> 56:24 <b>country</b> 35:4 40:10 62:21 <b>counts</b> 24:8
---	---	--	--

<b>couple</b> 26:6 <b>course</b> 16:15 51:24 57:21 60:7 61:3 <b>court</b> 1:1 2:1 6:2,6 6:9,19 7:1,3,6,8 7:11,14,17,25 8:3 8:5 9:16,23 10:3,7 10:13,15 13:9,18 13:23,25 15:9,13 15:24 17:8,9,11 17:13,16,18,20,22 17:24 18:3,5,10 18:25 19:2,5,7,15 19:18,24 20:16,19 21:2,7,11,13,15 21:22 22:7,11,14 22:17,20,25 23:2 23:9,11,15 24:18 25:1,5,13,15,21 26:3,7,14,18 27:1 27:3,5,10,13,19 27:21,22,24 28:1 28:5,8,10,13,16 28:19,22 29:1,4,5 29:9,12,16,19,21 29:24 30:2,4,8,13 30:17,25 31:4,8 31:10,12,15,20,22 32:1,5,7,10,12,17 32:21,23 33:3,9 33:17,23 34:3,8 34:11,15,22 35:6 35:18,25 36:3,4,8 36:11,12,17,20 37:1,3,8,15,18,19 37:22 38:6,8,19 39:10,15 40:2,4,7 40:9,23 41:1,7,16 41:20,23,25 42:2 42:4,10,14,22 43:1,3,6,8,12,14 43:16 44:1,6,10	44:16,19 45:3,7,9 45:13,17,19,21 46:19,21 47:1,6 47:10,13,23 48:4 48:6,8,12,15,23 48:25 49:4,6,12 49:15,19,23,25 50:4,6,12,15,18 50:23 51:3,5,10 51:13,15,17,21,23 51:24 52:9,12 53:3,4,22,25 54:5 54:8,12,24 55:4,6 55:8,10,13,18,21 56:2,5,9,16,17,18 57:14,17,21,24 58:2,4,7,10,13,16 58:20,22,24 59:1 59:5,13,18,22,24 59:25 60:3,7,16 60:22,24 61:2,5,7 61:9,12,14,19 <b>court's</b> 52:25 <b>courtroom</b> 6:24 6:25 53:6,12 54:20 <b>covered</b> 14:19 52:12 <b>covering</b> 50:3 <b>covers</b> 58:5 <b>creditor</b> 13:1 <b>creditors</b> 12:21 13:15 60:8 <b>criminal</b> 17:4 36:14 54:7,12 <b>crisp</b> 53:9 <b>critical</b> 12:10 13:21 57:12 <b>cues</b> 23:16 <b>culminated</b> 14:10 <b>cure</b> 20:12 <b>current</b> 11:19 13:7	<b>custody</b> 45:1 <b>cut</b> 14:12 23:7,10 23:12 31:1 <b>cute</b> 27:16 <b>cutting</b> 59:11 <b>d</b> <b>d</b> 6:1 <b>d&amp;m</b> 1:8,12 7:22 23:22 40:17 41:18 41:18 42:12,20 <b>d&amp;m's</b> 16:22 <b>data</b> 20:1 57:12 <b>date</b> 9:20 11:24 35:6 42:7 55:1,22 59:11 62:25 <b>dates</b> 46:13 55:24 <b>day</b> 8:7 14:7 15:6 21:13 22:13 26:11 26:21,23,24 39:7 45:24 46:11,11 52:15 61:16 <b>days</b> 18:14,16,20 24:14 26:8,9,25 <b>dead</b> 15:3 <b>deal</b> 17:1 <b>dealer</b> 9:1 30:11 30:16,17,20 <b>dealers</b> 8:22 <b>dealing</b> 29:7 36:18 <b>debrief</b> 49:11 <b>debt</b> 9:11 16:11 44:13 <b>debtor</b> 1:10 4:4 6:11,16,16 7:21 8:10,23,25 9:6,10 9:11,12,18 10:21 10:24 11:2,3,6,11 11:16,19,21 12:1 12:23,24 14:7,21 15:2 16:9,10,14 16:15,19 19:25 20:20 21:10 22:22	23:4 24:20 40:9 40:11,14,16 46:6 48:10,11,12 50:7 52:2 56:6,24 57:11 58:1 <b>debtor's</b> 6:23 8:14 9:21,22 10:18,24 12:4,18 14:17 18:19 53:9 60:17 60:24 <b>debtors</b> 6:14 <b>debts</b> 45:6 <b>deceive</b> 36:3 <b>defaulted</b> 38:3 <b>defendant</b> 19:3 25:18 <b>defendant's</b> 19:9 <b>defendants</b> 1:16 <b>delays</b> 53:17 <b>deliberate</b> 37:13 <b>delivered</b> 41:18 41:22 <b>demand</b> 14:12,15 14:22 15:5,6 39:19 <b>demands</b> 15:4 <b>demonstrates</b> 12:7 <b>denied</b> 8:3 <b>department</b> 4:20 54:10 <b>deposit</b> 42:13 46:4 <b>deposited</b> 41:9 <b>deposition</b> 46:15 55:24 <b>depositions</b> 18:12 18:23 <b>described</b> 14:24 <b>designs</b> 5:9 49:18 <b>despite</b> 14:12,15 52:20 <b>detail</b> 14:5 23:7,7 24:17
--	---	--	--

<b>determine</b> 47:17 <b>determined</b> 47:18 <b>dga</b> 10:19 <b>diamond</b> 5:11 7:18 10:1 49:20 50:2 51:20 <b>diamonds</b> 8:11,15 8:19 52:1,16 <b>different</b> 27:20,21 <b>dip</b> 12:4 <b>direct</b> 57:22 <b>directed</b> 37:8 44:7 51:7 56:13,20 61:9 <b>direction</b> 37:19 <b>directly</b> 8:16 11:25 54:13 56:14 <b>disclosure</b> 55:16 <b>discovery</b> 18:8,9 18:11,25 19:12 25:24,25 26:5,12 46:9,10 55:23 58:14 <b>discuss</b> 54:16 <b>discussed</b> 51:6 <b>discussion</b> 49:22 <b>discussions</b> 12:25 <b>dismiss</b> 18:5 20:10 22:8 <b>dismissal</b> 12:13 19:13 25:7 <b>dispose</b> 36:14 <b>disposed</b> 22:1 <b>disposing</b> 15:1 56:21 <b>disposition</b> 15:2 27:20 30:23 48:19 <b>dispute</b> 12:20 52:5 57:15 <b>disputed</b> 52:17 <b>disputes</b> 9:11 16:10	<b>district</b> 1:2 10:1 <b>disturbing</b> 52:3 <b>docket</b> 60:4,18,25 <b>document</b> 55:23 <b>documentary</b> 18:11 23:24 <b>documentation</b> 56:12 <b>documents</b> 18:13 18:17,17,20 24:5 26:19,21,22 <b>doing</b> 19:10 <b>dollars</b> 46:1 <b>don't</b> 31:5 34:3 <b>door</b> 9:21,25 10:2 10:4,4,5,15,17 13:16 29:24 <b>double</b> 9:21,25 10:15,17,20 <b>draft</b> 13:8 <b>dry</b> 31:1 <b>due</b> 13:7	<b>entry</b> 9:22,25 <b>equity</b> 12:6 <b>eric</b> 4:18 50:16,20 <b>essentially</b> 8:14 10:1 14:17 16:2,8 16:22 23:3 <b>essex</b> 1:15 5:2 6:13 9:1,6,15 11:10,12,13 12:20 13:2 14:8,17,23 15:1,3,15 16:7,8 16:14,16,18 17:3 18:14,14 19:20 24:4,25 37:5 52:6 52:15,25 56:13 <b>essex's</b> 9:12 12:15 15:18,25 27:15,17 <b>estate</b> 12:6,11,19 18:20 23:22 24:3 24:4,15 47:16 <b>et</b> 1:15 50:3 52:24 <b>eventually</b> 47:16 <b>evidencing</b> 14:20 <b>exceed</b> 38:17 <b>excellent</b> 36:8 50:12 60:10 <b>exception</b> 23:21 <b>exchange</b> 44:13 <b>exhibits</b> 14:25 24:6 <b>exit</b> 12:12 <b>expedited</b> 8:1 18:8 <b>expeditiously</b> 12:11 <b>explain</b> 22:5,9 <b>extant</b> 20:15 <b>extent</b> 24:13 54:11 56:11 57:4	<b>fact</b> 11:21 20:10 32:20 47:18 52:20 53:2 <b>facts</b> 22:4,15,16 22:17,23 23:18 36:18 46:21,22 47:15,15,17 48:20 49:7,13 53:16 <b>failed</b> 9:7 16:23 <b>failure</b> 25:7 <b>faith</b> 52:5 <b>false</b> 16:21,21 33:19,21,25 35:19 <b>familiar</b> 9:3 49:12 <b>far</b> 7:25 15:3 <b>fast</b> 48:19 <b>favor</b> 12:6 <b>february</b> 14:6 <b>federal</b> 48:18 53:3 <b>felon</b> 52:8 <b>ferdinands</b> 5:19 51:18,19,22,25 52:10,14 53:21,23 54:4,21 <b>figuring</b> 55:24 <b>file</b> 18:3 22:7 56:13 60:17 61:1 <b>filed</b> 9:12 13:8 20:8,10,11 21:5 21:10 39:18,24 47:19 48:2,4,8 52:20 59:3,5,15 <b>filing</b> 8:25 9:18 10:21,22 11:15 14:7 15:6 39:7 <b>financial</b> 40:16 <b>financing</b> 12:4 <b>find</b> 21:24 22:2 30:8 38:21 <b>fine</b> 24:18 26:23 <b>finished</b> 8:12 <b>firm</b> 4:12 14:2
	<b>e</b> 2:21,21 4:1,1 6:1 6:1 62:1 <b>easier</b> 29:2 <b>echo</b> 60:13 <b>ecro</b> 2:25 <b>effective</b> 59:11 <b>effectuate</b> 60:11 <b>effort</b> 17:1 <b>either</b> 8:16 12:13 23:23 24:23 36:6 37:5 <b>email</b> 35:12 59:19 <b>emergency</b> 56:15 <b>engage</b> 61:3 <b>engaged</b> 40:20 <b>entered</b> 8:25 15:14 48:1 59:20 <b>entitled</b> 22:4 24:22 25:24	<b>f</b> 2:21 62:1 <b>face</b> 45:24	

<b>first</b> 8:7,15 15:5 22:3 31:17 40:12 42:21 51:22 52:6 53:8 56:7 <b>floor</b> 4:15,22 5:3 5:12 <b>folks</b> 7:18 <b>followed</b> 57:8 <b>following</b> 9:14 <b>foregoing</b> 62:3 <b>form</b> 13:16 57:5 <b>forms</b> 12:22 <b>forth</b> 24:2 <b>forward</b> 11:21 12:11,12 17:25 19:6 46:8 53:11 <b>found</b> 30:10 <b>four</b> 8:25 9:6 14:9 31:16 44:14,20,24 44:24 45:3 58:11 <b>frankly</b> 52:13 <b>fraud</b> 17:5 <b>fraudulent</b> 24:8 <b>fraudulently</b> 9:6 14:10 <b>friday</b> 13:5 46:11 56:20 60:2 <b>frozen</b> 38:12,13 38:24,25 <b>fully</b> 46:5 <b>fundamental</b> 27:5 <b>funding</b> 11:25 <b>further</b> 51:7 54:17 <b>future</b> 12:5	21:25 27:18,21 28:2,14 29:7 30:10,23 34:5,21 35:2 36:6,23 37:17,23 38:2,5 38:11,12,13 39:10 40:12,23 41:8 43:24 46:1 47:18 49:18 56:20 57:13 58:17 <b>general</b> 58:14 <b>generally</b> 13:11 60:20 <b>getting</b> 45:13 54:6 <b>give</b> 28:23 35:6 42:12 <b>given</b> 11:24 60:1 <b>global</b> 1:15 5:2 6:13 9:1 14:8 19:20 52:6 <b>go</b> 7:19 8:8 13:23 16:13 18:9 23:2 26:10 37:15 39:10 44:5 52:13 <b>going</b> 15:11,13 18:17 20:15 22:21 23:2 25:21 26:11 26:13,15 29:7,10 35:7 37:10 40:7 41:3,3 42:16 43:25 46:2,3,4,5,5 46:7,8,9,10,13 47:16 49:10 51:2 55:3,23 57:18 58:13,14 59:3 60:12,20 <b>goldberg</b> 5:8 <b>good</b> 6:3,4,5,20,21 13:25 24:2 46:21 50:4,16,20 52:4 59:13 60:7 <b>goodman</b> 4:9 6:5 6:8,10,11,15,15	6:22 7:2,4,7,9,12 7:15,20,21 8:4,6 9:24,25 10:4,9,14 10:17 13:20 23:6 23:10,12,16 24:23 25:14,16,20 27:18 31:25 33:12 39:18 39:22 50:5 56:1,3 56:3,6,10,17 58:5 58:8,11,15,19,21 58:23,25 59:2,7 59:15,21 61:1,3,6 61:8,11,13 <b>goods</b> 8:22 9:9,20 10:25 11:2,4,6,19 11:22 12:14,17 14:8,13,19,21 15:5 16:7,19,21 16:23 17:2,21 24:8 39:6,8 44:13 45:15 <b>grab</b> 16:6 <b>granted</b> 24:12 <b>great</b> 33:9 34:15 35:12 55:21 60:8 <b>green</b> 2:2 <b>ground</b> 36:18 38:20 52:12 <b>group</b> 1:8,12 7:22 <b>guessing</b> 27:6 <b>guy</b> 29:3 <b>guys</b> 25:21	24:14 60:6 61:10 <b>happens</b> 37:10 44:5 <b>happy</b> 7:12 11:18 13:3 15:12 28:23 43:16 54:18 61:1 61:13 <b>hard</b> 15:10 <b>headline</b> 24:19 <b>hear</b> 17:13,16,24 19:15 22:23 27:1 27:3,23 34:4 35:23 41:20 42:24 53:7 61:15 <b>heard</b> 26:5,25 27:22 50:14 51:20 53:16 54:23 <b>hearing</b> 3:1,3 7:25 8:7 9:4 19:3 23:16 27:14 32:21,23 33:13 34:18 35:25 36:1 39:4 40:6 45:23 53:8 55:16 60:3 <b>held</b> 52:2 <b>hello</b> 6:19 <b>helpful</b> 15:11 <b>high</b> 8:11 <b>highlights</b> 14:3 <b>history</b> 21:17 36:21 40:18 <b>hit</b> 13:9 53:7 <b>hitting</b> 6:6 <b>hmm</b> 19:24 30:25 46:19 <b>hold</b> 21:15 25:13 25:15,21 32:1,5,7 32:7 42:10 53:4 55:4,6 <b>holding</b> 10:25 11:3 <b>holds</b> 14:17
<b>g</b>	<b>g</b>	<b>h</b>	
<b>g</b> 6:1 <b>gap</b> 60:1 <b>gather</b> 18:19 <b>gathering</b> 53:16 <b>gem</b> 25:9 <b>gems</b> 5:10 20:5,14 20:17,17,21 21:12	<b>goldberg</b> 5:8 <b>good</b> 6:3,4,5,20,21 13:25 24:2 46:21 50:4,16,20 52:4 59:13 60:7 <b>goodman</b> 4:9 6:5 6:8,10,11,15,15	<b>hai</b> 5:10 <b>half</b> 27:16 <b>hand</b> 13:22 <b>handle</b> 7:16 <b>handling</b> 12:24 <b>handy</b> 18:17 <b>happen</b> 41:3 43:25 47:10 61:10 <b>happened</b> 16:8 21:25 22:2 24:13	

<b>hon</b> 2:22 <b>honor</b> 6:4,5,10,20 6:21,23 7:4,20,24 8:6,10 9:18 10:11 12:3,9,19 13:3,12 13:14,20,24 15:12 16:4 17:6,12,15 18:7,8 19:6,17,19 23:6,13 26:25 27:22 28:7,15,18 28:24,25 29:23 30:5 32:18 33:1,6 33:7,12,22 34:17 36:2,9 37:14,20 39:3,13,18,20 40:15 42:7 43:20 44:3 45:6,20 47:12 48:22 49:14 50:5,14,16,20 51:9,11,18,20 53:21 54:22 55:3 55:9,15,19,20 56:3,13 57:10,18 58:5,19 59:15,21 59:23 60:12 61:1 61:13,18 <b>honor's</b> 50:25 <b>hope</b> 14:4 55:19 <b>hoping</b> 19:11 <b>huge</b> 44:13 <b>hyde</b> 3:25 62:3,8	<b>includes</b> 10:20 <b>including</b> 12:21 24:8 <b>inconsistent</b> 39:2 <b>indicated</b> 13:6 <b>indicating</b> 60:18 <b>indiscernible</b> 30:3 30:11 31:9,11,14 31:19 40:12,18 42:6,9,21 55:16 60:23 <b>individually</b> 4:13 50:22 <b>induced</b> 9:6 14:10 <b>industry</b> 11:16 <b>information</b> 28:4 39:12 45:11,15 46:6 56:24 57:19 58:9,10 <b>informed</b> 15:17 60:8 <b>initial</b> 12:25 <b>insolvent</b> 9:10 16:25 <b>instructed</b> 38:4 <b>insurance</b> 10:21 44:2,4,5 46:7 47:3 47:5 56:25,25 <b>insured</b> 44:1 46:5 47:2,7,11 50:2 <b>insureds</b> 57:16 <b>intend</b> 17:25 <b>intended</b> 17:8 20:2 <b>intends</b> 11:20 12:2 <b>interest</b> 11:6 12:22 13:14,15 16:14,17 23:22,23 23:23 24:10,13,24 40:17 49:21 52:1 54:2	<b>interested</b> 53:16 60:9 <b>interests</b> 21:11 26:15 <b>invade</b> 49:10 <b>inventory</b> 9:19 10:22,24 12:16 <b>investigating</b> 54:6 <b>investors</b> 8:18 <b>invoice</b> 9:7,8 14:10 23:25 <b>invoiced</b> 11:11 <b>involved</b> 30:21 39:25 54:6 <b>involves</b> 8:14 <b>israel</b> 5:1,6 6:13 6:13 17:6,10,14 17:15,17 19:16,19 19:19,25 20:17,20 21:4,9,14,21 22:5 22:9,12,15,19,24 23:1 25:2,3,6,19 26:1,4,9,17,23 27:2,4,14,20,25 28:3,6,9,12,15,17 28:20,24 29:2,6 29:10,14,15,18,20 29:23,24 30:1,3,5 30:8,10,14,19 31:1,6,18,21,23 32:2,6,9,11,17,18 32:22 33:1,6,11 33:14,15,21,24 34:6,10,13,17,24 35:8,17,23 36:1,5 36:21 37:9,20,23 38:7,10,22 39:11 39:14,17,20,23 40:3,5,8,11,19,22 40:23,25 41:12 42:19,24 43:2,5,7 43:11,13,15,18,22 44:2,23 45:4,23	46:17,20,22 47:3 47:9,11,21,25 48:3,5,7,11,14,22 48:24 49:1,5,14 50:8 53:15 55:10 55:12,20 56:23 57:10,15 60:15 <b>israel's</b> 24:19 50:25 <b>issue</b> 14:19 20:14 29:7,12 39:25 60:13 <b>issued</b> 57:6 <b>issues</b> 55:3 <b>it'd</b> 29:2 <b>it'll</b> 61:6 <b>items</b> 31:17 60:23
<b>j</b>			
<b>jaslow</b> 5:8 <b>je</b> 15:21 <b>jeweler</b> 37:4 <b>jewellery</b> 7:18 51:20 <b>jewelry</b> 5:9 8:12 8:16,19 30:11,16 30:17,20 49:18 52:2,16 <b>join</b> 20:24 <b>jp</b> 15:20 <b>judge</b> 2:23 52:15 54:22 <b>judgment</b> 20:8 43:23 <b>july</b> 7:23 11:17 59:10 <b>june</b> 11:17 39:14 39:17 <b>justice</b> 4:20 54:10			
<b>k</b>			
<b>k</b> 4:8 <b>katz</b> 5:8 <b>keep</b> 22:21 23:2 38:5			



<b>kind</b> 6:6 24:19 60:4 <b>kinds</b> 42:14 <b>king</b> 51:19 <b>know</b> 7:25 16:4 17:21 18:22 19:10 20:10 22:17 28:12 28:13,17 29:6 30:22 31:4,5 32:9 34:6 36:20,22 38:18 39:4 40:3 44:4 45:22 47:6 47:14 48:6,15 49:9 51:14 54:9 59:6,13 60:8,11 <b>knowingly</b> 36:3 <b>known</b> 5:10 49:20 <b>knows</b> 47:4	<b>levine</b> 5:8 <b>lexington</b> 4:15 <b>line</b> 24:18 33:13 <b>listed</b> 56:21 <b>literally</b> 47:23 <b>little</b> 6:8,9 7:25 14:5 23:7,9 29:2 36:11 53:9 <b>llc</b> 1:8,12,15 5:2,9 9:1 19:20 49:18 <b>lloyd's</b> 10:22 <b>llp</b> 4:3 5:8 <b>loan</b> 9:11 12:5 38:1,2,3,4 <b>locally</b> 5:10 49:20 <b>lock</b> 10:17,20 <b>london</b> 10:22 <b>long</b> 35:13 <b>longer</b> 15:25 16:3 38:15 <b>look</b> 27:5 31:4 36:17 59:14,20 <b>loose</b> 8:15,19 <b>lot</b> 21:24 23:7,11 53:10	<b>meant</b> 32:13 47:25 <b>meat</b> 21:23 <b>medina</b> 4:12,18 50:14,16,17,20,21 50:24 51:4 <b>meeting</b> 13:5 <b>meetings</b> 12:25 <b>member</b> 6:23 <b>memo</b> 8:21 9:2,20 11:4,7,9,12,22 12:16 14:20 15:21 16:19 <b>memos</b> 14:14,22 14:23 15:1 16:24 <b>mentioned</b> 11:11 <b>merely</b> 60:13 <b>merit</b> 38:6 <b>merits</b> 38:8 <b>microphone</b> 50:18 <b>million</b> 9:3,7 11:1 11:3,4,7,13,22 14:8,11 15:21 16:10,12,16,20 42:3,11 <b>millions</b> 46:1 <b>mind</b> 28:21,22 <b>mineola</b> 62:23 <b>minute</b> 17:13,16 29:13 <b>minutes</b> 29:3,19 30:4 47:23 <b>misheard</b> 26:7 <b>misrepresent</b> 34:20 <b>misrepresented</b> 34:20,22 <b>misunderstand</b> 60:24 <b>misunderstood</b> 60:16 <b>mm</b> 19:24 30:25 46:19	<b>moment</b> 28:16 30:24 34:4 <b>monetization</b> 12:15 <b>money</b> 16:14,23 41:11,25 42:5,6 <b>month</b> 9:14 16:15 35:10 <b>monthly</b> 11:18 13:6 <b>months</b> 8:24 11:17 <b>morning</b> 6:3,4,5 6:20,21 13:25 50:16,20 <b>morrissey</b> 4:25 13:10,12,13 54:8 54:18,23 55:11,15 55:19 58:22 59:8 59:23,25 60:9,19 60:21,23 <b>moscow</b> 30:12,13 30:16 31:19 32:15 33:16,18 34:5,7 34:12,13,16 36:24 37:4,12 39:10 41:23 42:18 46:2 56:22 <b>motion</b> 8:1 12:5 18:5 20:7,9 21:5,6 21:8,10 22:8,12 25:23,23,25 <b>moty</b> 4:13 6:23 <b>move</b> 12:11 19:14 40:7 46:8 <b>moved</b> 32:2,3 <b>moving</b> 11:20 <b>muller</b> 5:15 49:16 49:16,20,24 50:1 50:11 57:18,22,25 58:3 60:12
<b>l</b>	<b>m</b>		
<b>labor</b> 26:21,23,24 46:11 61:16 <b>lack</b> 11:24 <b>lacking</b> 20:25 <b>landing</b> 24:3 <b>lane</b> 5:3 <b>largest</b> 13:1 <b>law</b> 4:12 57:7 <b>lawsuit</b> 20:25 <b>lay</b> 23:22 <b>lead</b> 19:12 <b>leave</b> 45:24 <b>ledanski</b> 3:25 62:3 62:8 <b>legal</b> 62:20 <b>lending</b> 16:13 <b>lengthy</b> 53:17 56:10 <b>lent</b> 16:14 <b>letter</b> 56:14 60:17 60:25 61:4 <b>letting</b> 51:23 <b>level</b> 44:6	<b>maiden</b> 5:3 <b>main</b> 7:9,12 13:4 <b>maintained</b> 10:21 <b>making</b> 54:1 <b>man</b> 28:25 <b>manager</b> 6:23 <b>mantrap</b> 9:22,24 10:6 <b>material</b> 17:7 <b>matter</b> 1:6 24:21 25:19 52:10 53:14 <b>matters</b> 12:24 <b>mean</b> 16:25 17:23 19:2 26:12 28:10 38:23 44:19 <b>meaning</b> 33:18		

<b>n</b>	<b>objection</b> 17:6 50:5 59:6,9,18 <b>obligation</b> 32:24 <b>obviously</b> 17:8 20:2 23:19 43:25 52:2 <b>office</b> 50:25 53:13 54:5,8,13,17 57:19 <b>officer</b> 49:12 <b>oh</b> 6:24 21:9 26:9 36:13 47:25 60:16 <b>okay</b> 6:2,9 7:1,3 7:24 13:9 17:9,17 17:18,22 18:2,10 19:3,7,15 21:23 21:24,25 22:21,24 25:1,1,4,13,22 26:3 27:15,24 28:9,15,17 29:9 29:15,20,22 30:2 30:4,8 31:4,12 35:13 36:17,20,22 37:9 40:4,8 41:1 41:22 42:14,22 43:7,10,11 45:6 45:21 47:13 48:7 48:19,22 49:15,19 49:25 50:6,13 51:3 53:25 54:24 55:21 56:16 58:7 58:15,21,24 59:13 61:2,12,14 <b>old</b> 59:12 62:21 <b>once</b> 48:8 <b>ones</b> 15:24 37:24 37:24 38:14 39:1 44:17 49:23 53:23 <b>open</b> 10:5 13:16 <b>operating</b> 8:23 11:18 13:6 <b>opportunity</b> 54:22	<b>opposed</b> 60:5 <b>opposite</b> 38:16 <b>order</b> 8:2 9:10 15:14,17 28:13 50:25 51:8 56:21 57:5,6,8,9 59:17 59:19 <b>ordered</b> 56:7 57:4 <b>ordering</b> 41:7 51:5 <b>original</b> 12:4 <b>originally</b> 20:9 39:19 <b>ought</b> 48:16,18 <b>outright</b> 11:2 <b>overall</b> 13:21 <b>overcharged</b> 41:19 <b>overcharging</b> 41:21 <b>owe</b> 42:3 <b>owed</b> 42:5 <b>owes</b> 16:9 45:21 <b>owners</b> 25:9 <b>ownership</b> 23:22 24:1,20,21,24 <b>owns</b> 11:2 38:15	<b>participants</b> 8:17 12:17,22 13:2 24:2 53:23 57:1 57:12,22 <b>participate</b> 51:23 <b>participation</b> 8:17 20:22,22 21:2,5,7 21:11 40:18 49:21 52:1 <b>parties</b> 8:20 11:8 12:16 20:23 25:11 40:16 51:25 59:25 60:10 <b>partner</b> 7:15 9:16 13:22 14:2,2 <b>partners</b> 24:25 25:17 <b>party</b> 8:17 20:14 21:1 25:8 50:2 <b>path</b> 12:12 17:25 19:4 53:10 <b>patience</b> 61:15 <b>paul</b> 5:19 6:14,14 9:15 17:3 18:12 41:6,10,15,17,22 41:24 42:1,3,6,9 42:11,20,23 44:12 51:18 52:7 <b>pay</b> 16:23 38:1 41:10,15 45:5 <b>paying</b> 54:16 <b>payment</b> 9:7 <b>payments</b> 42:21 <b>pearls</b> 5:10 49:18 <b>people</b> 35:21 41:10,16 42:3,4,9 42:12 <b>peoples</b> 42:12 <b>percent</b> 16:14 23:23,23 24:21 <b>perfection</b> 24:12 <b>period</b> 14:7
<b>n</b> <b>n</b> 4:1 6:1 62:1 <b>name</b> 14:1 25:8 49:16 57:1 <b>named</b> 25:17 30:11 50:2 <b>names</b> 57:12 <b>narrow</b> 48:19 <b>necessarily</b> 57:25 <b>necessary</b> 20:14 21:1 25:8,11 35:14 59:17 <b>need</b> 18:19 19:14 25:11 39:12 45:9 45:10 48:20 56:15 58:18 <b>needs</b> 21:19 35:13 <b>negative</b> 60:6 <b>neighborhood</b> 16:10,16 <b>neither</b> 52:13 <b>never</b> 36:2 38:15 47:6 52:17 <b>new</b> 1:2 2:3 4:6,16 4:23 5:4,13 18:6 21:13 22:13,15,16 46:21,22 59:11 <b>news</b> 60:5,6 <b>nicely</b> 49:7 <b>nominal</b> 19:9 <b>nominally</b> 25:17 <b>note</b> 6:22 <b>noted</b> 11:21 12:4 <b>nothing's</b> 43:25 <b>notice</b> 60:14 <b>number</b> 15:21 16:12 <b>ny</b> 2:3 4:6,16,23 5:4,13 62:23	<b>p</b> <b>p</b> 4:1,1 5:1 6:1 <b>p.c.</b> 5:1 <b>page</b> 14:15,23 21:16 <b>pages</b> 14:24 33:13 <b>paid</b> 11:14 16:15 <b>panicked</b> 26:25 <b>papers</b> 17:10 19:23,25 59:9 <b>parameters</b> 38:17 <b>park</b> 5:12 <b>part</b> 8:4,5 <b>partial</b> 24:20 <b>participant</b> 53:19		
<b>o</b>			
<b>o</b> 2:21 5:6 6:1 62:1 <b>objecting</b> 19:22			

<b>person</b> 31:19 <b>personally</b> 28:3 43:13 <b>petition</b> 9:20 11:24 <b>phone</b> 7:17 51:23 <b>piccione</b> 4:8 6:18 6:20 <b>pick</b> 11:20 <b>pieces</b> 9:2,9 11:12 58:11 <b>place</b> 29:21 40:6 <b>plaintiff</b> 1:13 19:23 20:20 21:18 22:22 23:4 31:2 57:11 <b>plaintiffs</b> 25:10 <b>plan</b> 12:13 19:8 19:13 <b>platzer</b> 5:8 49:17 <b>please</b> 7:6 22:18 42:22,22,22 43:1 <b>pm</b> 61:21 <b>point</b> 19:13 24:19 26:5 33:12 45:22 50:4,12 56:1 <b>pointing</b> 38:11 <b>points</b> 13:10 56:7 <b>policy</b> 10:23 50:2 <b>position</b> 28:1 48:15 54:10 <b>positive</b> 60:5 <b>possession</b> 6:16 9:9,19 11:13 12:15 15:18,25 16:3 27:15,17 33:4,14 34:9 35:15 42:17 43:21 43:23 52:15,18,22 <b>possible</b> 55:5 <b>post</b> 15:5 <b>posted</b> 60:4	<b>potatoes</b> 21:23 <b>potential</b> 54:6 <b>preceding</b> 8:24 14:7 <b>precious</b> 8:12 15:2 <b>predatory</b> 16:13 <b>predicate</b> 57:5 <b>prefer</b> 43:20,22 <b>preferential</b> 24:9 <b>prejudice</b> 12:5 17:8 20:2 <b>premises</b> 9:21 <b>prepared</b> 26:20 <b>preparing</b> 12:23 <b>presence</b> 53:13 <b>present</b> 5:17 <b>presented</b> 30:22 30:24 <b>presentment</b> 59:16 <b>presumably</b> 10:7 10:9 37:11 <b>pretrial</b> 54:25 <b>pretty</b> 26:21 56:10 <b>price</b> 52:23 <b>primary</b> 27:8,10 <b>primrose</b> 5:20 <b>principal</b> 9:15 17:3 37:5,5 52:7 53:1 <b>principals</b> 18:15 27:17 <b>prior</b> 7:23 24:14 27:14 <b>privilege</b> 49:10 <b>problem</b> 20:12 35:3,4 41:10 47:20 <b>problems</b> 55:24 <b>procedure</b> 48:18	<b>proceed</b> 7:4 21:18 21:20 <b>proceeding</b> 9:14 14:4 17:1 35:22 52:7,17 53:1 <b>proceedings</b> 61:20 62:4 <b>proceeds</b> 12:15 14:16 52:24 <b>process</b> 12:8 <b>produce</b> 26:20 <b>prohibit</b> 14:22 15:1 <b>proof</b> 46:7 56:23 56:25 <b>proper</b> 40:17 <b>property</b> 24:14 40:9,11,13,15 48:9,11,12 <b>proposed</b> 4:4 6:11 6:16 7:21,22 56:6 <b>protect</b> 9:10 <b>proved</b> 37:2 <b>provide</b> 46:6,7 52:21 56:13 57:11 <b>provided</b> 14:20 56:24,25 57:19 58:12 <b>public</b> 52:10 <b>purchase</b> 8:15 23:25 <b>pursue</b> 24:7 <b>purview</b> 35:21 <b>put</b> 24:6 43:17,18 43:18,24 46:2 56:21 58:14 59:16 60:18,25 <b>putting</b> 20:4	34:1,21 <b>quickly</b> 19:14 25:17 <b>quite</b> 53:6
			<b>r</b>
			<b>r</b> 2:21 4:1 6:1 62:1 <b>radwan</b> 7:18 51:19,25 <b>raised</b> 20:5 <b>ramp</b> 23:11 <b>reach</b> 54:23 56:14 <b>read</b> 14:14 <b>ready</b> 18:9 <b>real</b> 25:16 27:22 32:20 47:17 <b>really</b> 13:13 19:13 21:25 39:4 <b>reason</b> 37:25 <b>reasonably</b> 34:11 <b>recalled</b> 21:9 <b>receipt</b> 8:18 <b>receive</b> 56:12 <b>received</b> 11:4,21 60:15,19 <b>receiving</b> 60:14 <b>recess</b> 30:7 <b>reckless</b> 36:6 <b>recognize</b> 23:13 <b>record</b> 6:10,22 13:12 23:17 27:14 31:15 51:5 52:11 54:2 56:8,19 57:9 62:4 <b>recording</b> 50:19 <b>referrals</b> 54:12 <b>referring</b> 41:14 <b>reflected</b> 11:17 <b>refusal</b> 16:5 <b>refused</b> 16:19 <b>regarding</b> 52:22 60:5 <b>related</b> 9:14 59:3
		<b>q</b>	
		<b>question</b> 21:17,23 44:9 <b>questions</b> 13:4 20:5 32:24 33:2	



<b>relatively</b> 11:16 26:18 48:19 <b>relevant</b> 17:7 52:14 <b>remain</b> 14:21 29:21 42:15 <b>remained</b> 15:16 15:18 <b>remains</b> 48:16 <b>remit</b> 9:7 <b>rendered</b> 16:25 <b>rendering</b> 9:9 <b>repay</b> 38:4 <b>reporting</b> 32:19 34:1 <b>reports</b> 11:18 13:6 <b>represent</b> 54:15 <b>representation</b> 15:15 33:20,22,25 35:15 37:3 44:12 <b>represented</b> 15:16 15:25 16:2 27:14 27:21 34:8 38:12 39:4 40:5 42:16 56:22 <b>representing</b> 51:19 <b>reputable</b> 30:16 30:17,19 37:4 <b>request</b> 15:14 58:14 <b>requested</b> 58:9 <b>requests</b> 46:9,10 <b>require</b> 35:13 37:10 <b>required</b> 26:12 <b>requires</b> 57:7 <b>reset</b> 6:6 53:8 <b>resolve</b> 12:20 <b>respect</b> 10:24 13:4 23:24 50:9,24 51:1,6 53:2 54:2	56:7 58:9,11 <b>respond</b> 20:7 23:5 23:6 <b>response</b> 15:3,8 20:9 24:19 <b>restraining</b> 8:2 <b>restraint</b> 31:25 <b>result</b> 9:12 11:15 <b>retention</b> 59:3,5,9 59:11,12 <b>return</b> 12:14,15 15:4 16:19 18:16 18:20 24:7 38:17 <b>returnable</b> 18:13 <b>returned</b> 11:14 14:21 37:9 39:1 41:8 45:2 60:2 <b>revenue</b> 11:24 12:3 <b>reviewed</b> 23:14 59:7,8 <b>richard</b> 4:25 13:13 <b>right</b> 6:2 7:1,11 13:9,18 15:22,24 17:7,11 19:15 21:17,21 22:14,23 23:1,4,11 24:23 25:1 26:3,9,17,22 27:3,6,17 28:7,8 28:16 29:17,18 31:17 32:22 33:10 33:15,19 35:3,6 35:14 36:14,15,19 36:20,22,23 42:25 43:3,8,15 44:7 45:3,4 46:15 48:14,21 49:13,15 50:12 51:5,10 52:9 53:25 57:2 58:4,13,16,20 59:22 61:17	<b>ring</b> 23:21 <b>rise</b> 30:6 <b>road</b> 62:21 <b>room</b> 29:14 <b>ruby</b> 23:21 40:17 <b>rule</b> 25:6,7 <b>rules</b> 48:18 <b>ruling</b> 37:16,19 <b>russia</b> 18:21 <b>russians</b> 44:14  <b>s</b>  <b>s</b> 4:1,18 5:15 6:1 <b>safe</b> 9:22 10:18 42:13 46:4 <b>safeguarded</b> 18:21 <b>sale</b> 8:20 9:7 11:11 14:16 <b>sam</b> 5:1,6 6:13 19:19 <b>sanders</b> 4:3 6:11 6:12,15 7:21 14:2 <b>sarah</b> 5:20 <b>satisfy</b> 12:20 <b>save</b> 12:19 <b>saying</b> 17:24 19:5 21:18 22:5,6 34:18 35:24,25 36:2 38:13,18,19 38:25 39:2 41:5 42:19 44:25 48:5 <b>says</b> 36:23 39:8 <b>scc</b> 1:3,4 3:1,3 <b>schedule</b> 28:10,11 28:20,21 31:5,16 31:18 37:17 56:21 <b>scheduled</b> 51:12 <b>scurrilous</b> 20:1 <b>seat</b> 6:2 43:1 <b>second</b> 8:18 10:4 15:6 46:17 55:4,6 <b>secure</b> 10:15 46:4	<b>secured</b> 9:19,21 38:2 <b>securing</b> 38:2 <b>securities</b> 17:5 <b>security</b> 10:19 24:9,11,12 <b>see</b> 22:20 29:24 35:4 37:10 55:2 61:15,16 <b>seen</b> 21:2,4 25:22 48:16 59:14 <b>sell</b> 36:15 39:8 42:2 <b>selling</b> 8:11 <b>send</b> 15:10 30:18 59:19 60:17 <b>sent</b> 40:10 41:23 57:2 <b>sentiment</b> 60:13 <b>separate</b> 11:5 14:9 <b>separated</b> 44:24 44:24 <b>september</b> 35:10 35:11 46:12 54:25 54:25 55:8,12,21 60:2 <b>series</b> 12:1 <b>serious</b> 47:14 53:14 <b>seriously</b> 49:2 53:2,6 54:19,20 <b>serve</b> 46:9 <b>served</b> 18:25 <b>serving</b> 19:1,2 <b>set</b> 51:16 54:24 <b>settlement</b> 12:16 19:12 <b>seven</b> 16:15 18:14 18:16,20 26:7,9 26:11,25 <b>shang</b> 5:9
--	---	--	--

<b>shanghai</b> 49:18 <b>share</b> 52:25 <b>shea</b> 2:25 <b>shelley</b> 2:22 <b>shifted</b> 38:22 <b>shifting</b> 38:20,21 <b>ship</b> 36:15 <b>shipped</b> 43:9 45:8 45:16 51:2 <b>shipping</b> 39:12 45:10 58:9 <b>shoes</b> 58:1 <b>short</b> 29:1 61:6 <b>shortly</b> 61:16 <b>show</b> 38:3 55:15 57:6 <b>side</b> 46:2 53:9 <b>sides</b> 46:13 <b>silence</b> 15:3 <b>similar</b> 8:18 <b>sir</b> 41:4 49:15 50:13 <b>sit</b> 43:2 <b>sitting</b> 35:20 <b>situation</b> 10:16 17:2 47:14 52:3 <b>six</b> 9:2,9 17:4 39:15 <b>small</b> 26:18 <b>sold</b> 41:16 44:12 52:23 <b>sole</b> 6:23 <b>solicit</b> 13:17 <b>solutions</b> 62:20 <b>somebody</b> 34:12 42:2 <b>son</b> 18:12,15 <b>sonya</b> 3:25 62:3,8 <b>sooner</b> 48:20 55:2 <b>sorry</b> 17:15 18:14 20:16 21:7 28:18 33:24 42:1 44:9 46:20 47:25 60:22	<b>sort</b> 45:21 <b>sorted</b> 48:20 <b>south</b> 5:12 <b>southern</b> 1:2 <b>spalding</b> 51:19 <b>specific</b> 24:17 54:1,3 <b>spector</b> 4:13 6:24 11:25 50:21 <b>spector's</b> 12:7 <b>speed</b> 37:13 <b>spend</b> 53:15 <b>spoiler</b> 37:11 <b>spoken</b> 30:19 <b>spreadsheet</b> 42:20 <b>standard</b> 9:21 <b>standing</b> 20:15 21:19 23:21 24:7 38:13 57:25 <b>standpoint</b> 23:20 <b>start</b> 7:12 23:9 <b>statement</b> 55:16 57:4 <b>statements</b> 44:19 <b>states</b> 1:1 2:1 4:20 36:7 38:14 40:24 41:8 45:10 46:25 50:10 53:20 54:9 56:23 <b>status</b> 3:1,3 7:7 9:17 13:11 60:25 <b>stay</b> 32:4,15 39:22 40:21 48:9 <b>staying</b> 25:24 <b>step</b> 7:24 <b>stepped</b> 6:24 <b>stolen</b> 16:7 <b>stone</b> 24:21 <b>stones</b> 8:12,16,19 13:2 15:2,16,18 16:5 23:25 27:15 27:19 31:16 33:4 41:17,18,19,23	42:4,15 43:3 44:8 44:8,11 46:3 49:21 50:3,9 53:20 57:1 60:1 60:14,18 <b>stop</b> 15:9 42:24,24 <b>stories</b> 42:14 <b>street</b> 4:22 <b>strongly</b> 49:11 <b>structured</b> 12:13 19:13 <b>stuff</b> 27:6 <b>subject</b> 52:4,17 <b>submit</b> 51:7 59:17 <b>substituted</b> 7:23 <b>successful</b> 12:12 <b>successfully</b> 8:23 <b>sue</b> 20:23 <b>sued</b> 20:21 <b>sufficient</b> 13:15 <b>suggest</b> 27:11 49:11 <b>suggestion</b> 59:23 60:7,11 <b>suing</b> 20:17 25:9 <b>suit</b> 21:1 <b>suite</b> 62:22 <b>summary</b> 20:8 <b>summer</b> 26:20 <b>superseded</b> 18:6 <b>support</b> 19:11 23:24 24:6 <b>supposed</b> 60:2 <b>supposedly</b> 44:17 <b>sure</b> 7:14,17 22:11,24 36:6 47:4,7,11 48:25 51:13,14,21 54:17 59:24 <b>suspect</b> 55:3 <b>swergold</b> 5:8 49:17	<b>system</b> 10:19 <b>t</b> <b>t</b> 14:25 62:1,1 <b>take</b> 11:19 17:25 28:16 29:1,3,13 29:16 35:8 46:17 54:10 56:18 59:14 59:20 <b>taken</b> 9:20 18:23 22:1 <b>takes</b> 35:9 <b>talk</b> 6:9 14:5 22:21 25:3 26:5 28:8 29:3,5 46:15 46:18,19 50:18 54:18 <b>talking</b> 22:21 26:22 31:16 32:18 38:18 41:12 46:1 60:20 <b>telephone</b> 35:12 <b>telephonically</b> 5:17 <b>tell</b> 38:20 <b>telling</b> 32:19 44:16 <b>temporary</b> 8:2 <b>terminology</b> 10:13 <b>terms</b> 14:13 53:13 <b>thank</b> 7:20 13:17 13:23,24 15:13 17:18 19:17,18,19 25:1 28:17,24,25 29:23 30:5 43:3 45:20 50:11 51:4 51:9,22 55:7,9 58:3 59:21 61:14 61:17,18,19 <b>thing</b> 19:22 22:3 26:4 34:19 35:12 36:17 39:25 40:5 41:3 56:18 57:10
--	--	--	--

58:25 59:1 <b>things</b> 18:21 19:21 36:11 47:10 52:3 <b>think</b> 29:4 31:2 33:1 34:3 36:5 39:24,25 48:16 49:8 50:7 52:14 54:19 55:14 56:19 58:5,8,22 59:2 60:9 61:14 <b>thinking</b> 48:1 <b>third</b> 4:5 8:17,20 8:20 11:8 12:16 <b>thorough</b> 49:11 <b>thought</b> 21:9 29:10 60:19 <b>three</b> 8:14 11:5 25:8 31:17 41:12 <b>thursday</b> 54:25 <b>time</b> 11:15 15:15 18:18 21:10,24 27:23 29:4 30:15 31:23 32:16,20 35:13 38:12,20,23 44:23 45:1 53:15 56:18 60:1,1 <b>today</b> 7:2 8:9 13:8 18:9 19:1,2 20:9 38:13,16,25 39:2 49:9 50:21 51:6 53:8,12 56:19 61:10 <b>told</b> 16:18 32:8 34:2 47:23 58:17 <b>top</b> 28:4 37:24 39:1 41:12 44:24 45:3 <b>topic</b> 49:22 <b>total</b> 9:2 11:7,12 11:22 <b>totally</b> 35:23 36:1	<b>touch</b> 19:9 <b>touched</b> 14:3 <b>track</b> 15:19 48:19 <b>tracking</b> 45:10 56:23 58:10 <b>trade</b> 8:22 10:18 <b>trading</b> 1:15 5:2 6:13 7:19 9:1 12:18 19:20 51:20 52:6 <b>traditional</b> 8:7 <b>transaction</b> 9:5 16:9 <b>transactions</b> 9:1 11:5 14:9 30:21 <b>transcribed</b> 3:25 <b>transcript</b> 33:13 62:4 <b>transfer</b> 14:20 32:14 38:15 46:23 48:9 <b>transferred</b> 42:17 47:19 52:19 <b>transferring</b> 47:5 <b>transfers</b> 24:9 <b>transit</b> 16:3 39:5 45:9 46:6,23,24 47:2,8,12 50:3 56:22 <b>tro</b> 9:4 15:14,17 23:16 32:21,23 45:22 47:25 56:21 <b>troutman</b> 4:3 6:11 6:12,15 7:21 14:2 56:4 <b>true</b> 62:4 <b>trustee</b> 4:21 13:6 13:13 35:20,20 53:14 54:9,15,17 59:6,7,8,9,19 <b>truthfully</b> 32:25 33:2	<b>try</b> 21:15,22 23:7 23:10 <b>trying</b> 15:18 33:7 33:11 49:6 <b>tuesday</b> 55:8,13 <b>turn</b> 13:18 35:19 <b>turnaround</b> 26:11 <b>turned</b> 16:21 <b>two</b> 11:12 15:16 15:17 16:14 25:10 32:10,12 33:4 35:2 37:23 38:24 42:15,21 43:3 44:8,11,14,25 45:1,13 46:3 49:21 50:9 53:19 56:7,20 60:1  <b>u</b>  <b>u</b> 14:25 <b>u.s.</b> 2:23 4:21 13:6 13:13 35:20,20 53:13 54:5,13,15 54:17 59:6,7,8,9 59:19 <b>ultimate</b> 5:9,10 49:17,20 50:1 <b>ultimately</b> 24:3 <b>unable</b> 52:21 <b>unambiguous</b> 57:3,8,9 <b>uncertain</b> 53:13 <b>unclear</b> 16:1 <b>understand</b> 12:2 21:14 26:1,1,19 27:2,4,13,13 31:23 34:17 38:10 38:19 40:25 41:4 41:5,6,7 43:8 44:15 47:21 49:14 <b>understanding</b> 34:25 35:1 <b>understood</b> 58:19	<b>undisputed</b> 13:1 52:4 <b>unfortunate</b> 10:13,14 49:8 <b>unfortunately</b> 31:7 <b>united</b> 1:1 2:1 4:20 40:24 41:8 45:10 50:10 53:20 54:9 56:23 <b>universe</b> 26:19 48:20 50:8 <b>unlimited</b> 12:10 <b>unrelated</b> 16:9 <b>unsecured</b> 9:11 13:1 <b>unwilling</b> 52:21 <b>update</b> 9:16 60:5 <b>urged</b> 53:15 <b>use</b> 29:14 39:8 55:1  <b>v</b>  <b>v</b> 1:14 14:25 <b>vacation</b> 35:9 37:11,11 <b>value</b> 9:2 10:25 11:7,9,12,22 15:20 45:24 <b>various</b> 12:22 15:4 24:8 <b>vault</b> 43:17 46:4 <b>vaults</b> 10:25 <b>veritext</b> 62:20 <b>version</b> 22:22 36:21,22 47:15,15 <b>view</b> 20:3 35:21 <b>violated</b> 57:5 <b>violation</b> 40:20 48:9 <b>voluminous</b> 56:19 <b>vouch</b> 10:11
--	---	---	---

w	world 8:13
<b>wait</b> 33:17	<b>worried</b> 27:6
<b>want</b> 18:18 21:15	<b>worth</b> 11:22 14:8
21:24,24 22:1,7	16:20
25:23 27:12 28:8	<b>writing</b> 60:4 61:4
28:10 29:1 34:16	<b>wrong</b> 19:22
34:18 40:23,24	<b>wrote</b> 31:6,8
41:2,4,20 42:24	x
43:6,8,9 44:4,6	x 1:5,11,17 14:25
47:7,13 50:1 61:3	y
<b>wanted</b> 34:4 60:3	<b>yeah</b> 22:7 25:5
<b>wants</b> 13:17 44:3	30:1 39:12 41:6
<b>waste</b> 21:24	45:19 48:23 50:15
<b>way</b> 8:10 30:23	50:18,23 55:13
34:25 37:12 39:9	56:5
<b>we've</b> 7:22 14:16	<b>year</b> 11:15
19:8 36:23 37:2	<b>years</b> 16:15 17:4
52:12 53:7	42:13
<b>week</b> 13:7 43:10	<b>yep</b> 51:15,17
45:6,7 46:23,24	<b>yesterday</b> 11:21
<b>weeks</b> 26:6	59:15
<b>went</b> 38:1	<b>york</b> 1:2 2:3 4:6
<b>whitehall</b> 4:22	4:16,23 5:4,13
<b>wholesalers</b> 8:20	
<b>wild</b> 36:11,13	
<b>willing</b> 30:18	
<b>withdrawn</b> 12:5	
21:16 22:12	
<b>woman</b> 31:9,11	
31:14	
<b>women</b> 10:7,9	
<b>won</b> 43:23	
<b>wondering</b> 54:4	
60:3	
<b>word</b> 35:18 59:19	
<b>words</b> 34:4	
<b>work</b> 26:10 44:6	
46:13 53:10 55:13	
55:23	
<b>working</b> 39:24	
<b>works</b> 10:7,9 55:9	
55:20	